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## **WAGANAKISING ODAWAK STATUTE 2009-007**

### **LAND USE, BUILDING REGULATION, AND ZONING STATUTE**

#### **SECTION I            SHORT TITLE**

This Statute may be cited as the “Land Use Statute.”

#### **SECTION II           PURPOSE**

The purpose of this Statute is to provide for the regulation of land use; set standards for the construction of buildings, structures, appurtenances, additions and decorations which may accompany them; and other developmental characteristics which may have an effect upon the public health, safety, and general welfare and have such regulated through the creation of the “Planning, Zoning and Building Department”

#### **SECTION III           REPEAL OF PREVIOUS LEGISLATION**

This Statute repeals and replaces the Zoning Statute, WOS 2001-13; Building Code, WOS 2002-02; Site Plan Review, WOS 2005-05, as may have been amended, subject to the following:

- A.**    Non-Conforming Uses. The use of any dwelling, building, structure, land or premises which was in existence and permitted under Tribal law at the time of enactment of this Statute may be continued at the discretion of the owner thereof, even though such use does not conform to the provisions of this Statute.
- B.**    Building Code, WOS 2002-02, is only repealed upon Tribal Council approval of replacement Building Code Regulations, pursuant to this Statute.

#### **SECTION IV.           DEFINITIONS**

The following definitions apply in this Statute:

- A.**    “Area Variance” means a departure from yard, height or other numerical requirement as stipulated in a zoning statute or regulation.
- B.**    “Conceptual Programming” means the process whereby initial concepts for land uses, development or infrastructure are pursued, formalized, and investigated for fundability.
- C.**    “Department” means the Planning, Zoning and Building Department created under this Statute.
- D.**    “LTBB” or “Tribe” means the Waganakising Odawak Nation, also known as the Little Traverse Bay Bands of Odawa Indians.

- E.** “Master Land Use Plan” means a policy guide for land development, acquisition and use. This document is derived from the “Strategic Plan for Land Acquisition” as developed by the Legislature, research, and public input.
- F.** “Trust Land” or “land in trust status” means land for which the United States holds fee title in trust for the benefit of LTBB.
- G.** “Use Variance” means authorization of uses not permitted by a zoning statute or regulation.

## **SECTION V CREATION OF THE PLANNING, ZONING AND BUILDING DEPARTMENT**

The Planning, Zoning and Building Department is hereby created within the Executive Branch to carry out the purposes stated in Section II, and each annual budget submitted by the Executive shall include funding for the Department’s operation subject to funding availability.

## **SECTION VI HANDICAP ACCESSIBLE NEW CONSTRUCTION**

All new buildings, structures, appurtenances, and additions built by the Tribe shall be designed and constructed in a manner that is handicap accessible.

## **SECTION VII AUTHORIZATION OF TRADITIONAL ACTIVITIES ON TRIBALLY OWNED PROPERTIES**

Article I, § B (1) of the Constitution “directs the Legislative, Executive and Judicial branches of government to...provide the preservation and revitalization of Anishinaabemowin and Anishinaabe culture.” The ability of the Citizens of the Waganakising Odawak Nation to utilize Tribally owned lands for ceremonies and other cultural or traditional activities is essential for the survival and revitalization of Anishinaabe culture. Citizens of the Waganakising Odawak Nation have a right to conduct ceremonies and other cultural or traditional activities on Tribally owned lands subject to health, safety and other reasonable restrictions outlined in regulations pursuant to this statute.

## **SECTION VIII DUTIES AND AUTHORITY OF EXECUTIVE BRANCH**

- A.** When Tribal Council requests lands be placed in Trust under Article VII.D.10 of the Constitution and designates the intended purpose of the individual parcel, the Executive Branch shall prepare the application and take all necessary steps to complete the Trust acquisition.
- B.** The Executive Branch develops Conceptual Programming of land uses, structures, and road systems for Tribal Council approval prior to their development or implementation.
- C.** Plans and Regulations:

1. **Creation and Implementation of Master Land Use Plan:** The Master Land Use Plan is a policy document that depicts the demographic and development conditions in the area encompassed by the LTBB Reservation, as well as the potential for or limitations on development for various areas within the Reservation. From this, a set of policies are synthesized which indicate how LTBB intends to reflect this information and the overall mission and vision of the Tribe in development activities. The Executive Branch shall develop regulations, subject to Tribal Council approval, creating and implementing a Master Land Use Plan.
2. **Land Base Restoration Plan:** The Land Base Restoration Plan is a document that depicts the originally intended uses of Trust land in accordance with the content of Trust applications to the Secretary of the Interior. It is a document that describes the purpose for an individual parcel of land at the time of the Trust application, and any subsequent use modifications by Tribal Council. It implies, but does not specify, the zoning category for a particular parcel of land. The Executive Branch shall develop regulations, subject to Tribal Council approval, creating and implementing a Land Base Restoration Plan.
3. **Zoning:** Zoning is implemented by LTBB through a series of regulations developed pursuant to this Statute, and becomes the primary regulatory instrument for implementing the Master Land Use Plan and Land Base Restoration Plan. Zoning divides a community into districts or “zones” which specify the permitted and prohibited uses. Further, it is the classification of land in any governmental jurisdiction into areas or districts in order to regulate building dimension, density, design, arrangement and use. The Executive Branch shall develop zoning regulations, subject to Tribal Council approval.
4. **Site Plan:** The Site Plan is a detailed plan, to scale, depicting how a site will be developed. It shows existing and proposed conditions, including lot lines, streets, building sites, buildings, other impervious surfaces, other areas of human disturbance, and major landscape features. The Executive Branch shall develop regulations, subject to Tribal Council approval, establishing a method for the review and approval, as well as final submission to Tribal Council of Site Plans for developments. Upon Tribal Council approval, a Site Plan is a legally binding document that is specific to that site and can only be modified by subsequent Tribal Council action.
5. **Building Codes and Construction Plans:** Building codes are a set of regulations that govern the content and execution of construction plans and projects. Construction plans are detailed drawings and diagrams, usually drawn and plotted to scale, showing the structure or arrangement to accomplish the construction of a building or buildings, pursuant to an approved site plan. The Executive Branch

shall develop regulations adopting building codes, subject to Tribal Council approval.

6. Utilization of Tribally Owned Lands by Tribal Citizens: The Executive Branch shall develop regulations, subject to Tribal Council approval, enabling Tribal Citizens to utilize designated Trust and other Tribally owned lands for cultural and/or traditional activities that would otherwise require a permit under approved regulations.

- D. Citations. The Department is authorized to issue civil citations for violations of zoning regulations, building codes, or site plans subject to regulations developed by the Executive and approved by Tribal Council.

## **SECTION IX                      ZONING BOARDS OF APPEALS**

- A. Zoning Boards of Appeals Established. A Zoning Board of Appeals (“Boards”) is hereby created. The Board shall adopt policies to carry out its duties under this Statute, subject to Tribal Council approval. The Board shall meet twice a year in regular meetings and additionally if necessary within 15 days of receiving any request for action by the Board.

- B. Appointments, Term, Nepotism and Conflict

1. The Board shall consist of three (3) member nominated by the Executive and confirmed by the Tribal Council. To be eligible for appointment a person must be a Tribal Citizen who is at least eighteen (18) years of age and has read all Tribal zoning laws, regulations, policies and procedures. The Board members shall serve three year terms with initial appointments being one member for one year, a second member for two years, and a third for three years to provide for staggered terms.
2. Staff members may serve on the Board and may be compensated by stipend if the Board is not directly related to their employment, does not interfere with their work, and does not meeting during scheduled work hours. If a Board meets during scheduled working hours and the staff member wishes to attend, the staff member must utilize PTO (personal time off), or flextime upon prior approval of the individual’s supervisor.
3. Two or more members of the same immediate family as defined in the Constitution shall not serve on the Board at the same time.
4. No Board Member may participate in making any decision that involves a personal or financial interest of the Board member or a member of his or her immediate family unless such interest is held in common with the Tribe and its Citizens.

- C. **OPEN MEETINGS, RECORDS**

1. Board meetings shall be open to LTBB Citizens.



2. Board records shall be open to LTBB Citizens.
3. The Board must provide notice of meetings at least five days in advance of the meeting.

**D. Compensation, Stipends**

Any Board member who attends a properly noticed meeting shall be eligible for a stipend, mileage, and expenses, even if no official action can be taken due to lack of a quorum, subject to the availability of funds.

- E. Zoning Board of Appeals Mandates.** The Board shall hear and decide appeals on the grant or denial of permits, or the issuance of citations, under zoning regulations, building codes, or site plans. Only a property owner may appeal a building code violation or permit denial. The Zoning Board is prohibited from granting Use Variances.

**SECTION X. APPEALS TO ZONING BOARD**

- A.** A party who claims to be aggrieved by a decision of the Department relating to a grant or denial of a permit(s), or the issuance of citations, under zoning regulations, building codes, or site plans may appeal such decision to the Board, except as per Section IX.E only a property owner may appeal a building code violation or permit denial, and the Board cannot grant Use Variances.

- i. An appeal of a decision of the Planning Department must be filed within fourteen (14) days of the challenged decision. The person or entity must file a written appeal to the Board including at a minimum:

1. A clear and concise statement of the reason(s) the appellant believes the decision should be overturned by the Board; and
2. The relief requested from the Board.

- B.** The Board shall hear the appeal within 15 calendar days of filing either during a regular meeting or special meeting called for that purpose and issue its written ruling within then (10) days of such hearing. The person appealing cannot proceed with any non-permitted construction while the appeal is pending.

**SECTION XI JUDICIAL REVIEW**

- A.** Decisions of the Board may be appealed to the Tribal Court by filing a written appeal with the Court within ten (10) days of the Board's ruling. The Court shall uphold the decision of the Board unless the Court determines that the Board's decision is clearly arbitrary, capricious, or otherwise not in accordance with applicable law or regulations.

- B.** The Tribal Council expressly waives the sovereign immunity of the Tribe and its agents for the limited purpose of reviewing the decisions of the Board under the standards set forth in Section XI.A and allowing for the remedies set forth in Section XI.C.
- C.** In the event the Court finds the Board's decision to be clearly arbitrary, capricious, or otherwise not in accordance with applicable law or regulations, it shall enter an equitable order overturning the Board's action, but shall not award monetary damages.

## **SECTION XII SAVINGS CLAUSE**

In the event that any section, subsection or phrase of this Statute is found by a court of competent jurisdiction to violate the Constitution or laws of the Little Traverse Bay Bands of Odawa Indians, such part shall be considered to stand alone and to be deleted from this Statute, the entirety of the balance of the Statute to remain in full and binding force and effect so long as the overall intent of the Statute remains intact.

## **SECTION XIII EFFECTIVE DATE**

Effective upon the signature of the Executive, or 30 days from submission to the Executive branch, or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

## CERTIFICATION

As the Tribal Council Legislative Leader and Tribal Council Secretary, we certify that this Statute was duly passed by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on March 8, 2009 at which a quorum was present, by a vote of 6 in favor, 1 opposed, 0 abstentions, and 1 absent as recorded by this roll call:

	In Favor	Opposed	Abstained	Absent
Fred Harrington, Jr.		X		
Melvin L. Kiogima	X			
Dexter McNamara	X			
Marvin Mulholland				X
Vacancy				
Alice Yellowbank	X			
Gerald V. Chingwa	X			
Regina Gasco Bentley	X			
Beatrice A. Law	X			

Date: \_\_\_\_\_

\_\_\_\_\_  
Beatrice Law, Legislative Leader

Date: \_\_\_\_\_

\_\_\_\_\_  
Regina Gasco Bentley, Secretary

Received by the Executive Office on \_\_\_\_\_ by \_\_\_\_\_

Pursuant to Article VII, Section D, Subsection 1 of the Little Traverse Bay Bands of Odawa Indians Constitution adopted on February 1, 2005 the Executive concurs in this action of the Tribal Council.

Date: \_\_\_\_\_

\_\_\_\_\_  
Frank Ettawageshik, Tribal Chairperson



# Waganakising Odawak

Little Traverse Bay Bands of Odawa Indians

## Office of Tribal Chairman

7500 Odawa Circle, Harbor Springs, Michigan 49740

Phone 231-242-1418 • Fax 231-242-1411

### MASTER LAND USE REGULATIONS

REG-WOS-2009-007 xxxxxx-xxx

- I. Purpose of Regulations.** The purpose of these Regulations is to mandate and organize the process for the creation, adoption, and amendment of a Little Traverse Bay Bands of Odawa Indians Master Land Use Plan. Said plan lays out goals, objectives, and general principles regarding land, land acquisition, and other developmental characteristics which may have an effect upon the public health, safety, and general welfare.
- II. Definitions:** The following definitions of word use shall apply:
- A. "Department" means the Planning Department.
  - B. "Officials" means the Tribal Chair, Vice Chair and Tribal Councilors.
  - C. Words used in the present tense shall include the future.
  - D. Words used in the singular number shall include the plural number and the plural the singular.
  - E. The word "shall" is mandatory and not discretionary.
  - F. The word "may" is permissive.
- III. Regulations pertaining to the Master Land Use Plan.**
- A. General purpose and development process.**
- a. **General Purpose.** The LTBB Master Land Use Plan fulfills three primary objectives:
    - i. The Initial step and reference document for the LTBB Land Acquisition Process (Matrix, Flow Chart 1, Flow Chart 2).
    - ii. Provides for public and official input regarding land use and land acquisitions
    - iii. Provides a general guide for land use, land use policies, and land acquisition for final approval by Tribal Council.
  - b. **Further Purposes.**
    - i. Encourages planning on a variety of scales, including both local and regional, in partnership with other governments and agencies;
    - ii. Clarifies the relationship between land use plans and implementation plans (implementation plans include both activity-level and project-specific plans);

- iii. Provides procedural requirements for completing land use plans and implementation plans;
- iv. Clarifies the relationships between land use and implementation planning.
- c. **Basic Planning Process, Plan Formulation and Updating.**
  - i. The Department shall be responsible for reviewing the LTBB Master Land Use Plan with Tribal Council every four (4) years. Further, a specific timeline shall be established, utilizing an Interdepartmental Plan Development Committee, for the public input portion of the Plan development. Based on the public and leadership input, the Department shall then update the Plan for Tribal Council approval.
  - ii. Plan Development Committee, composition, assignment, duties.
    - 1. The Plan Development Committee shall consist of staff from the Planning, GIS, Natural Resources, Housing, and other Departments, including the Environmental Programs Coordinator, as required. The chair of the committee shall be the Planning Department Director.
    - 2. The Plan Development Committee shall be supervised by Tribal Chairperson's designee, and the process managed by the Planning Director.
    - 3. Duties of the Committee shall be to coordinate and facilitate data collection, public and leadership input, and draft the publication of the updated Master Land Use Plan.
    - 4. Present the updated Plan for Tribal Council approval.
  - iii. Planning basis for the document
    - 1. Needs and desires of LTBB citizens and leadership
    - 2. Survey of existing infrastructure within the Reservation
    - 3. Land development capability and limitations
    - 4. Survey of existing land use and cover
    - 5. Demographics and analysis
  - iv. Public input process. The Master Land Use Plan shall contain a public input component from LTBB Tribal Citizens, as facilitated by the Plan Development Committee. Public input meetings shall be held during the plan development process, and presentations of the draft plan, at the following locations:
    - 1. Harbor Springs or Petoskey, Michigan
    - 2. Lansing, Michigan
    - 3. Grand Rapids, Michigan
    - 4. Escanaba, Michigan
  - v. Leadership input process. The Master Land Use Plan shall contain an officials input component from the LTBB Officials. This process may consist of surveys, Nominal Group Technique or other processes that allow for Official's input.
- d. **Approval Process**
  - vi. Departmental. The Draft LTBB Master Land Use Plan shall first be approved by the Planning Director before being presented to the Plan Development Committee.

- vii. Plan Development Committee. The Plan Development Committee shall approve the Draft LTBB Master Land Use Plan. Under the supervision of the Chairperson's designee, the Draft LTBB Master Land Use Plan shall be presented by the Planning Director to the Tribal Council Land and Reservation Committee.
- viii. Land and Reservation Committee. The Tribal Council Land and Reservation Committee may recommend for approval the Draft LTBB Master Land Use Plan before being presented to Tribal Council.
- ix. Tribal Council. After Tribal Council approval of the proposed document, the document shall be considered Final.
- e. **Land Acquisition and Development Policy.** The LTBB Master Land Use Plan shall contain Policies that relate to overall Tribal objectives, beliefs, and requirements when acquiring and developing land. These Policies are the LTBB approved culmination of the Master Land Use planning process, as provided for by d. herein.
- f. **The Matrix and Land Acquisition Flow Charts.** The three work products utilized in the Land Acquisition and Development Policy process are the Matrix, the LTBB Land Acquisition Flow Chart, and the Land and Reservation Committee Decision Flow Chart.
  - i. **The Matrix Content.** The Matrix shall be comprised of an Excel spreadsheet that lists the various land use types and purposes contemplated by the Tribe for all Reservation lands or future purchases. The Matrix shall further list various criteria related to the development of said lands, which are a direct reflection of the goals, objectives, and policies contained in the LTBB Master Land Use Plan. These criteria are scored and weighted by land use type and category.
  - ii. **The Matrix Use and End Product.** Each proposed land acquisition site has specific data that will be analyzed via a staff report, and entered into the Matrix. This data, cross-referenced with the weights referenced in i above, result in a unique score for that parcel or site that indicates the suitability of the parcel or site for a particular use or category of uses.
  - iii. **Land Acquisition Flow Charts.** Two flow charts, reproduced herein and entitled "LTBB Land Acquisition Flow Chart" and "Land and Reservation Committee Decision Flow Chart" which includes two processes. The Flow Charts and the LTBB Land Acquisition Strategic Plan process, are hereby part of these regulations.
- g. **Determination of Process.** The Land and Reservation Committee shall take into consideration the following factors in determining which Process to take when pursuing an interest in a property or the development of property: timeliness, cultural significance, like use of the property, contiguousness with previously owned property.
  - i. Process One. Process One utilizes, via the Planning Department, the Staff Due Diligence Report and accompanying Matrix data analysis.
    - 1. All proposals, opportunities, suggestions, and notices of lands available for acquisition are initially sent to the Legislative Office for cataloging and

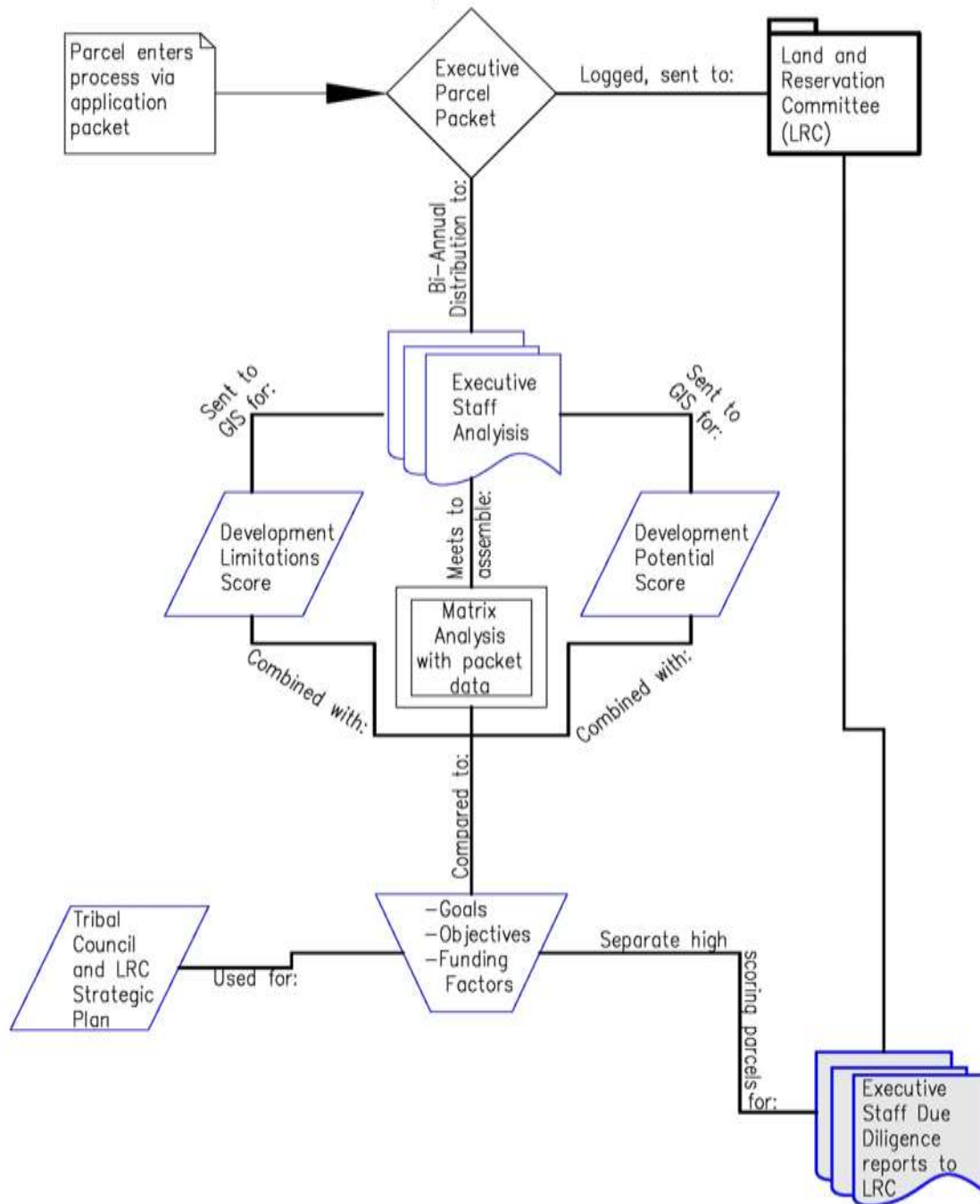
compilation. After logging, all available information is sent to the Land and Reservation Committee.

2. The Land and Reservation Committee shall determine if process one or two is going to be utilized. If process one is utilized then the Land and Reservation Committee shall request, via the a Planning Department, a Staff Due Diligence Report along with a Matrix data analysis.
  3. The data analysis is then compared against the policies, goals, and objectives defined in the Master Land Use Plan, and rated.
  4. Highly rated acquisition targets are passed to the Land and Reservation Committee for an initial decision on an Executive Staff Due Diligence Report.
  5. If requested, the Executive Staff Due Diligence Report shall contain the following:
    - a. Staff Site Visit: Planning, Environmental Services, GIS, Safety (if applicable)
    - b. Environmental Services staff:
      - i. Field Reconnaissance for Phase 1 Environmental Assessment (ASTM 1527-055)
      - ii. Natural Features
      - iii. Endangered Species
      - iv. Aquifer Vulnerability Study
    - c. GIS Department: provide standard series of maps
      - i. Reservation Overview Map with parcel locations
      - ii. Parcel Specific Map
      - iii. Community Zoning Maps
      - iv. Land Use Map
      - v. Topography Map
      - vi. Natural Features Map
    - d. Safety: inspect buildings if present
      - i. Building Safety Inspection
    - e. Planning Department: Compile information and develop report for Land and Reservation Committee and Executive Staff.
      - i. Analysis and explanation of information
      - ii. Presentation of conclusions and recommendations
      - iii. Assembly of final report and submittal.
  6. The resultant Staff Due Diligence Report is presented to the Land and Reservation Committee, who thereafter compares the information with the LTBB Land Acquisition Strategic Plan.
- ii. Process Two. Process Two expedites the process and brings the matter directly to Tribal Council via Enjinaaknegeng.

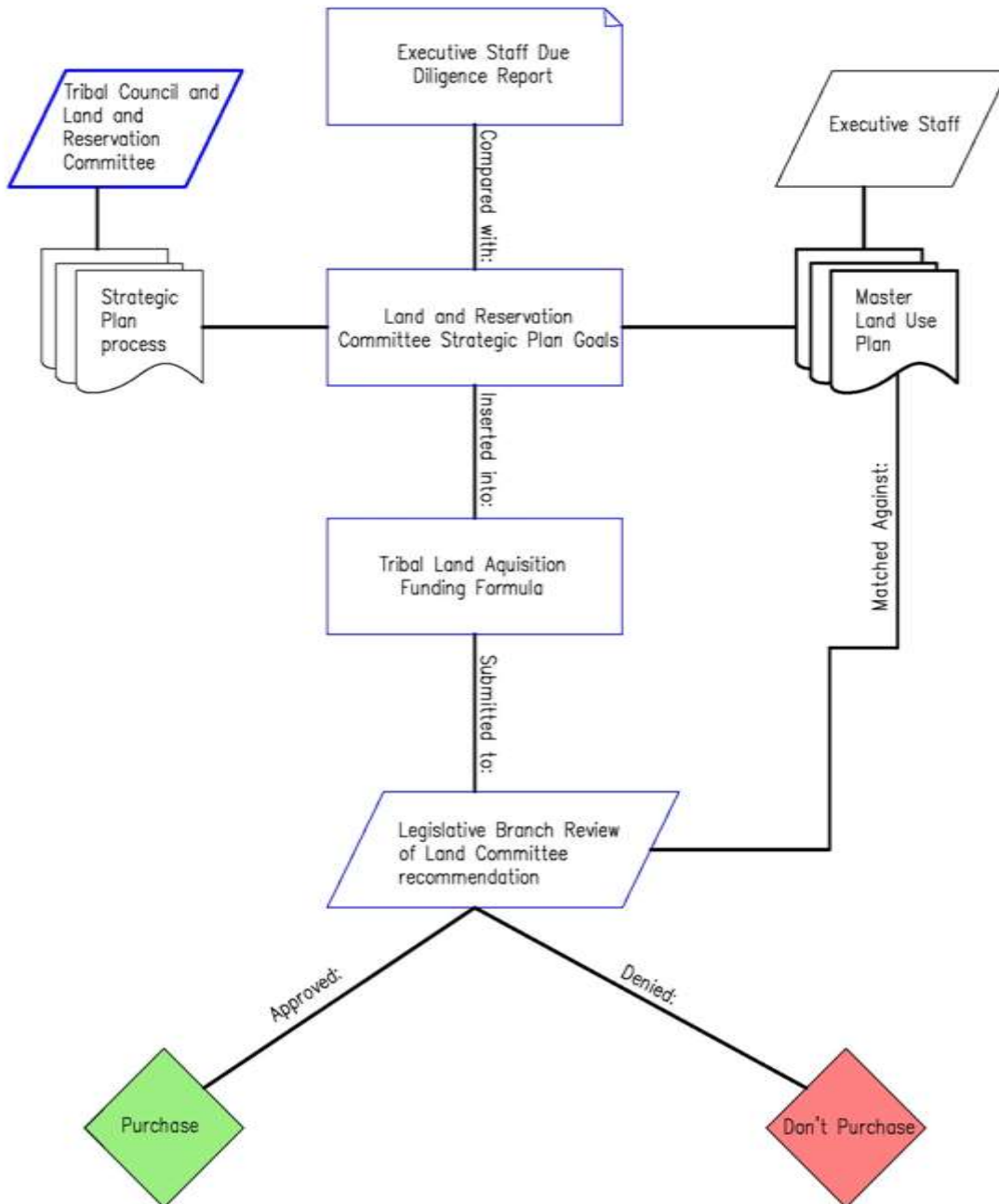
1. If process two is utilized, then the Land and Reservation Committee shall have Enjinaaknegeng gather more information for the committee and shall request a Matrix data analysis.
- iii. At the complete of either process one or two, the Land and Reservation Committee will make a recommendation for or against a purchase or development of land to Tribal Council.



# LTBB Land Aquisition Flow Chart



## Land and Reservation Committee Decision Flow Chart



- h. **Requirements for use.** The LTBB Master Land Use Plan, Matrix, and Land Acquisition Flow Charts are required for use in all land acquisitions, designations, developments. The regulations provided for herein, processes developed as a result of those regulations, and work products thus produced, are hereby declared to be the official regulatory record of all LTBB land acquisitions.



# Waganakising Odawak

Little Traverse Bay Bands of Odawa Indians

## Office of Tribal Chairman

7500 Odawa Circle, Harbor Springs, Michigan 49740

Phone 231-242-1418 • Fax 231-242-1411

### LAND BASE RESTORATION PLAN REGULATIONS

REG-WOS-2009-007 xxxxxx-xxx

- I. Purpose of Regulations.** The intent of these regulations is to provide for the development, maintenance, and modification of the LTBB Land Base Restoration Plan consistent with the requirements and purposes of the LTBB Zoning Statute, WOS 2009-007. Through the application of the following provisions, the attainment of the Master Land Use Plan of the Little Traverse Bay Bands of Odawa Indians (LTBB) will be assured and the LTBB community will develop in an orderly fashion.
- II. Definitions:**
- A. Department: means the Planning Department.
- B. Site Plan: means drawings that provide an overhead perspective on how buildings, parking areas, and other facilities would appear on a site. A site plan might also show service routes, landscaping, site zoning, sidewalks, expansion forecasts, neighboring streets, and other buildings.
- III. Regulations pertaining to Land Base Restoration Plan:**
- A. **Official Zoning Designation document.** The Land Base Restoration Plan is the official zoning designation document for the Little Traverse Bay Bands of Odawa Indians. All parcels of land owned by LTBB shall be included in the Land Base Restoration Plan for the purpose of zoning designation.
- B. **Approval Process.** The Planning Department shall make a recommendation of the zoning designation to the Land and Reservation Committee for a recommendation to Tribal Council. Upon approval of the designation by Certified Motion, Enjinaaknegeng shall prepare a trust application document to be approved by Tribal Council and submitted to the Bureau of Indian Affairs, (BIA). All zoning designations shall be included in the Land Base Restoration plan.
- C. **Modifications.** Any changes in the zoning designation shall be approved by Tribal Council Certified Motion and shall be considered official when recorded in the Land Base Restoration Plan and on the LTBB Zoning Designation Map by the Department.

**D. Development Process.** The development of the Land Base Restoration Plan is derived from the official LTBB trust application documents, as submitted to the Bureau of Indian Affairs. In these applications it is necessary that Tribal Council give each tract of land a proposed zoning designation as follows: Low Density Suburban Residential, Medium density Cluster Residential, Multi-Family/Mixed residential, Forest/Recreational/Conservation, Highway Commercial, Central Business district/Mixed Use, Gaming and related uses/PUD, Light Industrial District or Agriculture.

- a. Parcels which are within the Treaty of 1855 reservation boundaries shall be included in the Land Base Restoration Plan upon the submittal of the Trust Application to the Bureau of Indian Affairs.
- b. Parcels which fall outside the reservation boundaries of the Treaty of 1855 will only be included in the Land Base Restoration Plan upon their acceptance into Trust by the Bureau of Indian Affairs.
  - i. When the data has been compiled into the summary by the Department, the summary will be inserted into the Land Base Restoration Plan according to the district which it falls into based upon the proposed land use designated by Tribal Council.
  - ii. The Land Base Restoration plan will be housed at the Department and a copy will be posted on the LTBB website.

**E. Land Base Restoration Plan Modification Process.**

- a. The Department shall be responsible for reviewing the LTBB Land Base Restoration Plan with Tribal Council and Tribal Chairperson every four (4) years to gather input to update the Plan. All requests for modification of the Land Base Restoration Plan will be presented to the Land and Reservation Committee and sent to the LTBB Planning Department for initial processing.
- b. Requests for modification of the Land Base Restoration Plan shall be accompanied by the following:
  - i. A Site Plan showing the existing conditions and uses on the site.
  - ii. Documentation on the reasoning behind the proposed change supported by necessary data.
  - iii. Documentation of any impacts (positive and negative) to the surrounding properties by the proposed change.
  - iv. After processing, the LTBB Planning Department will schedule and advertise a public meeting for gathering public input on the proposed change.
  - v. A 30 day public comment period shall commence the day following the public meeting.

- vi. Within 15 days after the public comment period, the LTBB Planning Department shall issue a report on the proposed change and forward this report along with all supporting documentation to Tribal Council for approval.
- c. Modification of the Land Base Restoration Plan will occur by Tribal Council Certified Motion.
- d. The Department will, within 15 days, modify the Land Base Restoration Plan as stated in the Certified Motion and the modification will be considered official.



# Waganakising Odawak

Little Traverse Bay Bands of Odawa Indians

## Office of Tribal Chairman

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### ZONING REGULATIONS

REG-WOS-2009-007 xxxxxx-xxx

- I. Purpose of Regulations:** The purpose of these Regulations is to provide for the regulation of land use; the structures, appurtenances, additions and decorations which may accompany them; and other developmental characteristics which may have an effect upon the public health, safety, and general welfare.
- II. Definitions:** The following definitions of word use shall apply:
1. Words used in the present tense shall include the future.
  2. Words used in the singular number shall include the plural number and the plural the singular.
  3. The word “**shall**” is mandatory and not discretionary.
  4. The word “**may**” is permissive.
  5. The word “**lot**” shall include the words "piece", "parcel" and "plot".
  6. The phrase “**used for**” shall include the phrases "maintained for" and "occupied for".
  7. The phrase “**designed for**” shall include the phrases "arranged for" and "intended for".
  8. All “**measured distances**” shall be to nearest foot. If a fraction is one-half foot ( $\frac{1}{2}$ ) or less, the next full number below shall be taken.
  9. The words “**dwelling**”, “**family dwelling**”, “**2 family dwelling**”, “**multiple dwelling**”, “**building**”, “**house**”, “**premises**”, or “**lot**” as used in this Statute shall be construed as if followed by the words "or any part thereof".
  10. “**Abandoned Sign**”: A sign which no longer identifies or advertises a bona fide business, owner, lessor, person, service, product or activity, or for which no legal owner can be found.
  11. “**Accessory Building**” An accessory building is a subordinate building situated upon the same lot as the main building the use of which is incidental to the main building.

12. “Accessory Dwelling Unit” (Also see “Dwelling, Tiny”) An accessory dwelling unit, or “Tiny House” is a smaller, secondary home on the same lot as a primary dwelling. ADUs are independently habitable and provide the basic requirements of shelter, heating, cooking, and sanitation, constructed consistent with the applicable provisions of the current ICC Residential Building Code. There are two types of ADUs:
  - a. Garden cottages are detached structures. Examples include converted garages or new construction, between 170 and 600 square feet in size.
  - b. Accessory suites are attached to or part of the primary dwelling. Examples include converted living space, attached garages, basements or attics; additions; or a combination thereof.
13. “**Accessory Use**” An accessory use is a use subordinate and customarily incidental to the main use on a lot. “**Accessory Use**” means any of the following land uses on a farm:
  1. A building, structure, or improvement that is an integral part of, or is incidental to, an agricultural use.
  2. An activity or business operation that is an integral part of, or incidental to, an agricultural use.
  3. A farm residence.
  4. A business, activity, or enterprise, whether or not associated with an agricultural use, that is conducted by the owner or operator of a farm, that requires no buildings, structures, or improvements other than those described in paragraph (1) or (3), that employs no more than 4 full-time employees annually, and that does not impair or limit the current or future agricultural use of the farm or of other protected farmland.
  5. Any other use that the department, by rule, identifies as an agricultural use.
14. “**Agricultural Use**” means any of the following:
  1. Any of the following activities conducted for the purpose of producing an income or livelihood:
    - a. Crop or forage production.
    - b. Keeping livestock.
    - c. Beekeeping.
    - d. Nursery, sod, or Christmas tree production.
    - e. Floriculture.



- f. Aquaculture.
  - g. Fur farming.
  - h. Forest management.
  - i. Enrolling land in a federal agricultural commodity payment program or a federal or state agricultural land conservation payment program.
2. Any other use that the department, by rule, identifies as an agricultural use.
15. **“Agricultural-Related Use”** means any of the following:
- 1. An agricultural equipment dealerships, facility providing agricultural supplies, facility for storing or processing agricultural products, or facility for processing agricultural wastes.
  - 2. Any other use that the department, by rule, identifies as an agricultural-related use.
16. **“Aircraft Landing Area”** Any premises which are used or made available for the landing or takeoff of aircraft, including premises which are classified as a restricted landing area as contemplated by the rules and regulations promulgated by the Federal Aeronautics Administration, and including any appurtenant areas which are used or suitable for use for buildings or facilities incidental to aircraft services.
17. **“Alley”** A narrow thoroughfare upon which the rear of premises generally abut or upon which service entrances of buildings abut, and which is not generally used as a thoroughfare by both pedestrians and vehicles, or which is not used for general traffic circulation, or which is not in excess of 30 feet in width at its intersection with a street.
18. **"Alteration" (of sign):** As used in this Article, the term "alteration" (or "alter," "altered" etc.) means any change in a sign, including, without limitation, any change in a sign's dimensions, shape, area, height, number or orientation of sign faces, structural support, location on the property, materials or lighting. A change solely in the wording of the copy of a sign shall not constitute an "alteration" for purposes of this Article, unless the result of the change would cause the sign to be reclassified to a type of sign subject to different or more restrictive regulation (e.g., a change from an on-premise to an off-premise sign).
19. **“Alternations”** Any change, addition, or modification in construction or type of occupancy, or in the structural members of a building, such as walls or partitions, columns, beams or girders, the consummated act of which may be referred to here-in as "altered" or "reconstructed".
20. **"Ambient"** means the sound pressure level exceeded 90% of the time or L<sub>90</sub>.

21. **"Anemometer Tower"** means a freestanding tower containing instrumentation such as anemometers that is designed to provide present moment wind data for use by the supervisory control and data acquisition (SCADA) system which is an accessory land use to a Utility Grid Wind Energy System.
22. **"ANSI"** means the American National Standards Institute.
23. **"Apartments"** A suite of rooms or a room in a multiple-family building arranged and intended for a place or residence of a single-family or group of individuals living together as a single house keeping unit.
24. **"Auto, Abandoned"** A vehicle that is at least five (5) model years old, mechanically inoperable, and left on property visible from public property for more than 20 days or left for more than 48 hours on private property without the property owner's consent can be considered abandoned.
25. **"Base Farm Tract"** means one of the following:
  1. All land, whether one parcel or 2 or more contiguous parcels, that is in a farmland preservation zoning district and that is part of a single farm on (enter date here that is either the date that TC certifies regulations or another date as recommended)
  2. Any other tract that the department by rule defines as a base farm tract.
26. **"Basement"** That portion of a building which is partly or wholly below grade but is so located that the vertical distance from the average grade to the floor is greater than the vertical distance from the average grade to the ceiling. A basement shall not be counted as a story.
27. **"Bed and Breakfast"** A bed and breakfast facility is a dwelling licensed to serve over night guests in a residence for a fee. Such a facility shall be owner occupied with the owner operating the facility as proprietor.
28. **"Building"** Any structure, either temporary or permanent, having a room supported by columns or walls, and intended for the shelter or enclosure of persons, animals, chattels or property of any kind.
29. **"Building Existing"** An "existing" building is any building actually constructed or the construction of which is started previous to the effective date of this Statute; provided that the construction of any such building continues uninterruptedly and is completed within 6 months from such date.
30. **"Building Height"** The vertical distance measured from the established grade to the highest point of the roof surface for flat roofs; to the deck line of mansard roofs; and to

the average height between eaves and ridge for gable, hip and gambrel roofs. Where a building height is located on sloping terrain, the height may be measured from the average ground level of the grade at the building wall.

31. **"Building Line"** A line formed by the face of the building. A minimum building line is the same as the front setback line.
32. **"Club"** A non profit organization of persons for the promulgation of culture, sports, arts, sciences, literature, politics or the like.
33. **"Commercial Message"**: Any sign wording, logo, or other representation that, directly or indirectly, names, advertises, locates or calls attention to a business, profession, product, service, or other commercial activity.
34. **"Community Service Group Sign"**: A sign which displays the name or logo of an agency, organization or group whose primary purpose is to promote or provide community or public service, including, but not limited to, the Rotary Club, Jaycee's, Lion's Club or Ambuc's.
35. **"Community Special Event Sign"**: A sign, either portable or non-portable, displayed only for a limited time, to call attention to special events of interest to the general public which are sponsored by governmental agencies, schools or other groups which are non-profit and whose purpose is charitable, philanthropic, religious or benevolent.
36. **"Conditional Use"** means a use allowed under the conditional use permit issued by the political subdivision.
37. **"Construction Sign"**: A sign which identifies the owners, lenders, contractors, architects, and engineers of a project under construction, as well as the project itself.
38. **"Convalescent or Nursing Home"** A structure with sleeping rooms where persons are housed and furnished with meals, nursing and medical care.
39. **"Copy"**: The wording on a sign surface in either permanent or removable letter form.
40. **"dB(A)"** means the sound pressure level in decibels. It refers to the "a" weighted scale defined by ANSI. A method for weighting the frequency spectrum to mimic the human ear.
41. **"Decibel"** means the unit of measure used to express the magnitude of sound pressure and sound intensity.
42. **"Department"** means the LTBB Planning Department.

43. **“Development”** The construction of a new building or other structure, on a zoning lot, the relocation of an existing building on another zoning lot, or the use of open land for a new use.
44. **“Directional Sign”**: A sign which gives directions, instructions, or facility information for the movement of vehicles or pedestrians on the lot on which the sign is located, such as parking or exit and entrance signs, but not including a commercial message.
45. **“District”** Any section within the exterior boundaries of the Little Traverse Bay Bands of Odawa Indians Reservation, or otherwise within LTBB’s jurisdiction, where the zoning regulations are uniform under the laws of LTBB.
46. **“Drive-In”** A business establishment so developed that its retail or service character is dependent on providing a driveway approach or parking spaces for motor vehicles so as to serve patrons while in the motor vehicle rather than within a building or structure.
47. **“Dwelling”** A building or portion thereof designed or used for residential occupancy, but not including house trailers, mobile homes, hotels, motels, boarding and lodging houses, tourist courts or tourist homes.
48. **“Dwelling, Multiple”** A building designed for or occupied by three or more families.
49. **“Dwelling, Single-Family”** A building designed for or occupied by one family.
50. **“Dwelling, Tiny”** A tiny home shall be defined as a principal residential dwelling that has a square footage of between 170 and 750, and be no larger than 75% of the area of the principle dwelling unit.
51. **“Dwelling, Two-Family”** A building designed for or occupied by two families.
52. **“Erected”** Built, constructed, altered, reconstructed, moved upon, or any "physical" operations on the premises which are required for construction, excavation, fill, drainage, and the like, shall be considered a part of erection.
53. **“Essential Services”** The erection, construction, alteration or maintenance by public utilities or municipal departments of underground, surface, or overhead; gas, electrical, steam, fuel or water transmission or distribution system, including towers, poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm and police call boxes, traffic signals, hydrants, and similar equipment in connection herewith, but not including buildings, which are necessary for the furnishing of adequate service by such utilities or municipal departments for the general health, safety or welfare.
54. **“Excavation”** Any breaking of ground, except common household gardening, ground care, and soil tilling related to agricultural production or tree plantations.

55. **“Family”** One or two persons or parents, with their direct lineal descendants, dependents, and adopted children (and including the domestic employees thereof) together with not more than two persons not so related, living together as a single housekeeping unit.
56. **“Farm”** means all land under common ownership (all owned by exactly the same person or entity) that is primarily devoted to agricultural use.
57. **“Farm Acreage”** means size of a farm in acres. For purposes of residential density calculations, “farm acreage” may also include open space parcels that are split from a farm if they are kept in open space use and contain no residential or other non-farm buildings. “Farm acreage” does not include “non-farm residential acreage”.
58. **“Farmland Preservation Area”** means an area that is planned primarily for agricultural use or agricultural-related use.
59. **“Farmland Residence”** means any of the following structures that is located on a farm:
1. A single-family or duplex residence that is the only residential structure on the farm or is occupied by any of the following:
    - a. An owner or operator of the farm.
    - b. A parent or child of an owner or operator of the farm.
    - c. An individual who earns more than 50 percent of his or her gross income from the farm.
60. **“Fence”** Any permanent partition, structure, or gate erected as a dividing marker, barrier, or enclosure, including hedges or living bushes or shrubs, encircling either wholly or any portion of any area.
61. **“Farm”** A "farm" includes structures, facilities and lands for carrying on of agricultural activity or the raising of livestock or small animals as a source of income, or sustenance.
62. **“Floor Area, Usable”** For the purpose of computing parking requirements, usable floor area is that area used for or intended to be used for the sale of merchandise or services, or for use to serve patrons clients or customers. Floor area used or intended to be for the storage or processing of merchandise, hallways or for utilities or sanitary facilities shall be excluded for the computation of usable floor area.
63. **“Freestanding Sign”**: A sign not attached to a building or wall, which is supported by 1 or more poles or braces or which rests on the ground or on a foundation resting on the ground.

64. **“Garage, Private”** Accessory building space designed or used for the storage of motor-driven vehicles.
65. **“Gasoline Service Station”** A place primarily operated and designed for the dispensing, sale or offering for sale of motor fuels and other petroleum products, which may include a repair garage, together with the sale of accessories. Such site may also include a convenience store and/or restaurant if appropriate permits are obtained.
66. **“Grade”** For the purpose of regulating the number of stories and the height of buildings, the building grade shall be the level of the ground adjacent to the walls of the building. If the ground is not level, the grade shall be determined by averaging the elevation of the ground for each face of the building.
67. **“Greenbelt, Screening”** A strip of land of definite width and location reserved for the planting of shrubs and/or trees to serve as an obscuring screen or buffer strip in carrying out the requirements of this Statute.
68. **“Greenbelt, Shoreline”** When bordering bodies of water, an undisturbed area of land paralleling the water's edge to a depth of the required zoning setback distance if not otherwise stipulated, which is retained in a natural condition and is essentially void of any structural improvements. Beaches and/or vegetated areas shall be defined as shoreline greenbelts.
69. **“Governmental Sign”**: A sign erected or required to be erected by Tribe, Emmet County, or the state or federal government.
70. **“Ground Sign”**: A freestanding sign the bottom of which is no more than 24 inches above the finished grade.
71. **“Home Occupation”** Where permitted in a district, a business use of a residential premise by the occupant that may be carried on in accordance with the restrictions contained in this Statute and other applicable law or regulation.
72. **“Hotel”** See definition "Motel, Motor Inn or Hotel".
73. **“IEC”** means the International Electrotechnical Commission.
74. **“Inventory”** means goods in stock.
75. **“ISO”** means the International Organization for Standardization.
76. **“Junk / Salvage Yard”** An open area where waste, used or second hand materials are bought and sold, exchanged, stored, baled, packed, disassembled or handled including, but not limited to scrap and other metals, paper, rags, rubber tires, and bottles. A “junk/salvage” yard includes automobile wrecking yards and includes any area of more

- than two hundred (200) square feet for storage, keeping or abandonment of junk, but does not include uses established entirely within enclosed buildings.
77. **“Kennel, Commercial”** A dwelling unit or a nonresidential building, structure, parcel of land or portion thereof in which (3) three or more dogs, cats or other household domestic animals are maintained, boarded, bred, cared for or kept for the purpose of sale, or temporary boarding but not including veterinary care or treatment.
78. **"Lease Unit Boundary"** means boundary around property leased for purposes of a Wind Energy System, including adjacent parcels to the parcel on which the Wind Energy System tower or equipment is located. For purposes of setback, the Lease Unit Boundary shall not cross road right-of-ways.
79. **“Livestock”** means bovine animals, equine animals, goats, poultry, sheep, swine, farm-raised deer, farm-raised birds, camelids, ratites, and farm-raised fish.
80. **“Loading Space”** An off-street space for the temporary parking of a commercial vehicle while loading and unloading merchandise or materials.
81. **“Lot Coverage”** That portion of the lot occupied by main and accessory buildings.
82. **“Lot Depth”** The horizontal distance between the front and rear lot lines, measured along the median between the side lot lines.
83. **“Lot Lines”**
1. Front lot line: is that line which creates the abutting street right of way line (in the case of a corner lot the front line shall be that line which the front of the house faces).
  2. Rear lot line: that line which is opposite the front line.
  3. Side lot line: any lot line other than the front or rear lot line.
84. **“Lot of Record”** A lot which is part of a subdivision, the map of which has been recorded in the office of the Register of Deeds of Emmet County or the Bureau of Indian Affairs; or a parcel of land, the deed of which was recorded in the office of the Register of Deeds of Emmet County or the Bureau of Indian Affairs.
85. **“Lot Width”** Lot width is the distance from one side lot line to the other side lot line measured at the minimum building setback permitted in this Statute.
86. **“Lot, Zoning”** A contiguous tract of land which at the time of filing for a building and zoning permit is designated by its owner or developer as a tract to be used, developed or built upon as a unit, under simple ownership or control. A zoning lot may not coincide with a lot of record, but may include one or more lots of record.

87. **“Main Building”** A building containing the principal use of the lot upon which it is situated.
88. **“Master Land Use Plan”** The Comprehensive Plan for the Little Traverse Bay Bands of Odawa Indians as may be amended or updated, including graphic and written proposals indicating the general location for streets, parks, schools, public buildings and other physical development features.
89. **"Memorial Sign":** A non-illuminated sign, tablet, or plaque memorializing a person, event, structure or site.
90. **“Mobile Home”** Any structure designed and pre-manufactured as a complete and transportable housing unit to be used as a place of residence for one family. Mobile homes are structures legally transportable over a highway, but the term shall not include licensed travel trailers. The term "mobile homes" shall include double wide mobile homes, but shall exclude modular homes or pre-manufactured homes which are installed with a permanent foundation and which do not come with a steel frame attached.
91. **“Mobile Home-Permanent”** Mobile Homes shall be considered permanent dwellings when the unit is mounted on a continuous masonry foundation or on a foundation of solid masonry pilings as specified elsewhere in this Statute. Further, the permanent mobile home shall meet the minimum floor area requirements for one-family dwellings, be securely anchored to the ground, and be taxable as real estate if such taxes be assessed.
92. **“Mobile Home-Temporary”** Any unit other than a travel trailer or permanent mobile home having no foundation; but which may be equipped with wheels or other devices for transporting from place to place.
93. **“Mobile Home Park”** A parcel or tract of land under the control of a person upon which three (3) or more mobile homes are located on a continual non recreational basis and which is offered to the public for that purpose regardless of whether a charge is made therefore, together with any building, structure, enclosure, sheet, equipment or facility used or intended for use incident to the occupancy of a mobile home and which is not intended for use as a temporary trailer park.
94. **“Motel, Motor Inn or Hotel”** A building or part of a building with a common entrance or entrances in which the dwelling units or rooming units are used primarily for transient occupancy. A hotel or motor inn may contain a restaurant, cocktail lounge and conference center facilities.
95. **"Non-Commercial Sign":** A sign, either portable or non-portable, without any commercial message. For example, a sign identifying a candidate for public office is a non-commercial sign.



96. **“Non-Conforming Use”** A building, structure or use of land lawfully existing at the time of enactment of this Statute, and which does not conform to the regulations of the District or Zone which it is situated.
97. **“Nonfarm Residence”** means a single-family or multi-family residence other than a farm residence.
98. **“Nonfarm Residential Acreage”** means the total number of acres of all parcels on which nonfarm residences are located.
99. **“Nuisance”** The word "nuisance" shall be held to embrace whatever is dangerous to human life or detrimental to health; or any dwelling or building which is over-crowded with occupants or is not provided with adequate ingress or egress to or from the same, or is not sufficiently supported, ventilated, sewerred, drained, cleaned or lighted in reference to its intended or actual use; or whatever renders the air or human food or drink unwholesome.
100. **“Nursery, Plant Materials”** A space, building or structure or combination thereof, for the storage of live trees, shrubs or plants offered for retail sale on the premises including products used for gardening or landscaping. The definition of nursery does not include space used for the sale of fruits, vegetables, gifts, lawn furniture and gardening or farm equipment.
101. **“Official Map”** A map prepared by or in consultation with the Zoning Administrator and the Planning Department, and approved by the Tribal Council, that depicts LTBB’s reservation and delineates the land use districts defined and located by the Tribal Council under this Statute. Also referred to as the LTBB Official Zoning Designation Map.
102. **"Off-Premise Sign":** A sign which relates to or advertises an establishment, product, merchandise, good, service or entertainment which is not located, sold, offered, produced, manufactured or furnished at the property on which the sign is located (including, but not limited to, billboards).
103. **“Off Street Parking Lot”** An area of definite length and width exclusive of drives, aisles or entrances giving access thereto and fully accessible for the storage or parking of permitted vehicles.
104. **"On-premise Sign":** A sign which pertains solely to the use of the property on which it is located such as to an establishment, product, merchandise, good, service or entertainment which is located, sold, offered, produced, manufactured or furnished at the property on which the sign is located.

105. **"On-Site Wind Energy System"** means a land use for generating electric power from wind and is an accessory use that is intended to primarily serve the needs of the consumer at that site.
106. **"Owner"** means a person who has an ownership interest in land.
107. **"Parking Space"** A parking space is an accessible either garage or surfaced area, not less than 10 feet in width and 20 feet in length, exclusive of area required for ingress or egress, which can be used at all times for parking a motor vehicle.
108. **"Permitted Use"** means a use that is allowed without a conditional use permit, special exception, or other special zoning permission.
109. **"Person"** An individual, partnership, association, trust or corporation or any other legal entity or combination thereof.
110. **"Planned Unit Development (PUD)"** A residential or commercial development guided by a master design plan in which one or more of the zoning or subdivision regulations, shall be permitted to be waived or varied to allow flexibility and creativity in site and building design and location, in accordance with guidelines shown herein.
111. **"Pole Sign"**: A freestanding sign, the bottom of which is more than 24 inches above the finished grade, and which is supported by a structure, poles, or braces which are less than 50 percent of the width of the sign.
112. **"Portable Sign"**: A sign that is not permanent or affixed to a building or structure and by its nature may be or is intended to be moved from one location to another, whether rented or owned, such as "A" frame signs or signs attached to or painted on vehicles parked and visible from the public right-of-way, unless the vehicle is used for vehicular purposes in the normal day-to-day operations of the business.
113. **"Prime Farmland"** means an area with a Class I or Class II land capability classification as identified by Natural Resource Conservation Service.
114. **"Principle Use"** The primary or chief purpose for which the lot is used.
115. **"Protected Farmland"** means land that is located in the farmland preservation zoning district, is covered by a farmland preservation agreement, or is otherwise legally protected from nonagricultural development.
116. **"Public Utility"** A public utility is any person, firm, corporation, municipal department or board duly authorized to furnish or furnishing under regulation, to the public, electricity, gas, steam, communication, transportation, drainage or water.

117. **"Real Estate Sign"**: A non-illuminated temporary sign pertaining to the sale, rent or lease of the property on which it is located.
118. **"Recreational Vehicle"** A vehicle primarily designed and used as temporary living quarters for recreational, camping or travel purposes, including a vehicle having its own motive power or a vehicle mounted on or drawn by another vehicle.
119. **"Recreation Camps, Lodges and Resorts"** A recreational facility normally operated for gain, which provides overnight lodging and recreational activities including but not limited to golf, skiing, dude ranching, recreational farming, snowmobiling, pack trips, and boating.
120. **"Residential Subdivision Sign"**: A sign identifying a recognized platted subdivision, site condominium project, multi-family development, or other residential development, which subdivision, project or development has been approved by the Tribe as provided by this regulation.
121. **"Restaurant"** A commercial establishment whose primary business is the preparation of food for immediate consumption, either on site or carry-out.
122. **"Retail Store"** Commercial establishment for public retail sale of goods, related services, food or beverage, including but not limited to convenience stores. A retail store may sell perishable items, tobacco products or alcoholic beverages if applicable permits are obtained.
123. **"Roadside Stand"** An accessory and temporary farm structure operated for the purpose of selling local agricultural products raised or produced by the proprietor and his employees on the same premises.
124. **"Roof Line"**: For purposes of this Article, "roof line" means the top edge of a roof or building parapet, whichever is higher, excluding any cupolas, pylons, chimneys or minor projections.
125. **"Roof Sign"**: A sign erected above (or which extends above) the roof line of a building.
126. **"Room"** For the purpose of determining lot area requirements and density. A room is a living room, dining room, bedroom equal to at least eighty (80) square feet in area. A room shall not include the area in kitchen, sanitary facilities, utility provisions, corridors, hallways and storage.
127. **"Rotor"** means an element of a wind energy system that acts as a multi-bladed airfoil assembly, thereby extracting, through rotation, kinetic energy directly from the wind.

128. **“Service Based Businesses”** Commercial establishments who primarily provide services, and limited related retail items.
129. **“Setback”** The distance required to obtain front, side or rear yard open space provisions of this Statute.
130. **“Shadow Flicker”** means alternating changes in light intensity caused by the moving blade of a wind energy system casting shadows on the ground and stationary objects, such as but not limited to a window at a dwelling.
131. **“Shopping Center”** A group, cluster, or complex of retail stores within a single architectural plan, and occupying a site under single ownership, management or control. At least three (3) retail stores and services, so arranged or planned, shall qualify as a shopping center for zoning purposes.
132. **“Sign”**: A device, fixture, placard, or structure that uses any color, form, graphic, illumination, symbol, or writing to advertise, announce the purpose of, or identify the purpose of any business, establishment, person, entity, product, service or activity, or to communicate information of any kind to the public.
133. **“Sign, Accessory”** A sign which is accessory to the principal use of the premises and located on the same lot as the principal use.
134. **“Sound Pressure”** means an average rate at which sound energy is transmitted through a unit area in a specific direction. The pressure of the sound measured at a receiver.
135. **“Sound Pressure Level”** means the sound pressure mapped to a logarithmic scale and reported in decibels (dB).
136. **“Story”** That part of a building, except a mezzanine and/or basement, between the surface of one floor and the surface of the next floor, or if there is no floor above, than the ceiling next above. A story shall not be counted as a story when more than fifty (50) percent, by cubic content, is below the grade level of the adjoining ground.
137. **“Story, Half”** An uppermost story lying-under a sloping roof having an area of at least two hundred (200) square feet with a clear height of seven feet six inches (7'6"). For the purposes of this Statute the useable floor area is only that area having at least four feet (4') clear height between floor and ceiling.
138. **“Street”** A public dedicated right-of-way, affording the principal means of access to abutting property (excludes alleys).
139. **“Structure”** Anything constructed or erected, the use of which requires location on the ground or attachment something having location on the ground.

140. **“Temporary Use of Building”** A use or building permitted to exist during periods of construction of the main building or use, or for special events.
141. **“Travel Trailer and Camper”** A trailer coach, motor home, tent camper, de-mountable camper or unit designed as a vacation unit for short-term seasonal occupancy, which measures eight (8) feet or less in width and designed to be operated on highways.
142. **“Use, Reasonable”** A proposed use is "reasonable" when it would be harmonious, compatible, appropriate, would not impinge unreasonably on the value or use of nearby properties, and would not impair sound communal development as and where proposed to be established. An existing use is "reasonable" when it is harmonious, compatible, and appropriate as and where established, does not impinge unreasonably on the value or use of nearby properties, and does not impair sound communal development. Uses which are not "reasonable" are "unreasonable." No use shall be deemed "reasonable" if its establishment or actual conduct is unlawful under the statutory or common law of the Little Traverse Bay Bands of Odawa Indians.
143. **"Utility Grid Wind Energy System"** means a land use for generating power by use of wind at multiple tower locations in a community and includes accessory uses such as but not limited to a SCADA Tower, electric substation.
144. **"Wall Sign"**: A sign painted or attached directly to and parallel to the exterior wall of a building. A wall sign shall extend no greater than 12 inches from the exterior face of a wall to which it is attached, shall not project beyond the wall to which it is attached, and shall not extend above the roof line of the building to which it is attached.
145. **"Wind Energy System"** means a land use for generating power by use of wind; utilizing use of a wind turbine generator and includes the turbine, blades, and tower as well as related electrical equipment. This does not include wiring to connect the wind energy system to the grid. See also On-Site Wind Energy System and Ground Wind Energy System.
146. **"Wind Site Assessment"** means an assessment tot determine the wind speeds at a specific site and the feasibility of using that site for construction of a wind energy system.
147. **“Yard”** A yard is an open space, unoccupied and unobstructed from the ground upwards, except as otherwise provided herein, and on the same lot with a building. The measurement of a yard shall be the minimum horizontal distance between the lot lines and the building or structure.
1. Required Yard: That portion of any lot on which the erection of a main building is prohibited.

2. **Front Yard:** A yard on the same lot with a building between the front line of the building and the front lot line and extending from one side lot line to the other side lot line.
  3. **Rear Yard:** A yard on the same lot with a building between the rear line of the building and the rear lot line and extending from one side lot line to the other side lot line.
  4. **Side Yard:** A yard on the same lot with a building between the side lot line and the nearest side line of the building and extending from the rear yard to the front yard.
148. **Zoning Administrator:** The individual appointed by the Tribal Administrator to administer these regulations.

### **III. Regulations pertaining to Zoning Districts.**

- A. Existing Uses of Land and Buildings.** The lawful use of any dwelling, building or structure and of land or premises as existing and lawful at the time of enactment of this Statute may be continued at the discretion of the owner thereof even though such use does not conform to the provisions of this Statute. Non-conforming existing uses of land and buildings on newly purchased land may be continued until re-zoned or assigned by LTBB, at the owner's discretion.
- B. Zoning Affects Every Structure and Use.** Except as hereinafter specified, no building, structure, or premises shall hereafter be used or occupied, and no structure or part thereof shall be erected, razed, moved, placed, reconstructed, extended, enlarged or altered, except in conformity with the regulations herein specified for the district in which it is located.
- C. Division of Zoning Lots.** No zoning lot improved with a building or buildings shall hereafter be divided into 2 or more zoning lots and no portion of any zoning lot which is improved with a building or buildings shall be sold, unless all zoning lots resulting from each such division or sale and improved with a building or buildings shall conform with all of the bulk regulations of the zoning district in which the property is located. Where the plot plan presented in the application for a permit includes more than one recorded lot, the Zoning Administrator, or his/her Deputy, may execute an affidavit in which the facts with reference to the use of said platted lots, or parts of platted lots, shall be stated and shall cause the same to be recorded in the Office of the Register of Deeds of the County in which it exists, or as applicable the Bureau of Indian Affairs Title Office, the cost of recording to be borne by the applicant.
- D. Non-Conforming Lots of Record.** Any single lot or parcel of land which was of record at the time of adoption of this Regulation and which does not meet the requirements for minimum lot width and area may be utilized for a permitted use provided the yards, or lot

area and lot width are not less than 75 percent of the minimum required dimensions or areas in the zoning district.

- E. Contiguous Non-Conforming Lots.** When two or more parcels of land, each of which lacks adequate dimension or area to qualify for use as a non-conforming lot under the regulations herein, are contiguous and are held in one ownership, they shall be used for a permitted use under the requirements for the use district in which they are located.
- F. Improved nonconforming lots of record.** Any single lot or parcel of land, which was of record at the time of adoption of these regulations, which cannot meet the requirements for a nonconforming lot of record herein, and which was improved on or before the date of adoption of these regulations, shall be considered an improved nonconforming lot of record. The improvement on such lot may be utilized for any permitted use, so long as the amount, quantity or degree of any existing nonconformity is not increased thereby, and no new nonconformity is thereby created. Notwithstanding the other provisions of this Regulation, if such improvement has been damaged by fire, explosion, act of God or the public enemy, it may be restored so long as the amount, quantity or degree of any existing nonconformity is not increased thereby, and no new nonconformity is thereby created
- G. Rentals.** By right, a homeowner may rent up to two rooms, to two lodgers, for periods up to 21 days, without license.
- H. Home Occupations.** Home occupations are permitted in all residential dwellings, subject to all of the following requirements:
- a. A home occupation shall be conducted only within the principal dwelling unit, and shall not be conducted in any other building.
  - b. Only persons who are occupants of the dwelling unit and not more than one other person shall conduct a home occupation.
  - c. Not more than 40% of the floor area of a dwelling unit shall be used for a home occupation.
  - d. There shall be no exterior alteration in the residential character of the dwelling as a result of a home occupation.
  - e. A home occupation shall not result in a serious adverse effect upon adjacent or nearby lands or the uses thereof, nor shall it have a disrupting effect on other properties or the residential character of the neighborhood.
  - f. Any permitted motor vehicles parked on the premises as a result of the home occupation shall be parked off street. Not more than two motor vehicles shall be permitted on the premises where a home occupation is conducted, as a result of the home occupation.

- g. Any motor vehicle traffic generated by a home occupation shall not result in a greater volume of traffic than would normally be expected in a residential neighborhood.
- h. Any mechanical equipment used in a home occupation shall be only that which is similar in power and type to mechanical equipment normally used for household purposes and hobbies.
- i. There shall be no sign pertaining to the home occupation, but there may be one non-illuminated name plate, of any area not greater than two square feet, stating only the name of the person engaged in the home occupation.
- j. If articles or materials used in the home occupation are stored, they shall be stored only within the dwelling unit. No outdoor storage or accessory building shall be permitted for inventory.
- k. There shall be no sale of goods or merchandise on the premises of the home occupation, except those produced on the premises by the conducting of the home occupation. No goods, merchandise or other articles for sale shall be displayed in such a manner as to be viewable from outside the principal dwelling. Exceptions. Notwithstanding the definition of home occupations set forth above, certain occupations that are pursued partially or entirely in a district zoned R-1, R-2, R-3 and A-1 may be excluded from the requirements and regulations of this Ordinance by determination of the Building Official. Those occupations that may be excluded from the operation of this Ordinance are:
  - i. Consistent with Anishinaabe Culture
  - ii. Commercial Fishing
  - iii. Amway dealers
  - iv. Avon dealers
  - v. Mary Kay products dealers
  - vi. Home Interior salespersons
  - vii. Insurance salespersons
  - viii. Sewing and alterations
  - ix. Seed corn or agricultural or livestock products
  - x. Items produced from hunting or gathering
  - xi. Woodworking
  - xii. Catering from the home and home baking
- l. Such uses as medical clinics, dental clinics, barber shops, beauty shops, animal hospitals, kennels, real estate offices, group day care homes (where considered to be a group child care home for up to 12 unrelated children) and motor vehicle servicing, repair and maintenance businesses shall not be permitted as home occupations.

**I. Additional Yard Regulations for Multi-unit Dwelling Structures.** For the purpose of applying yard regulations, multiple dwellings shall be considered as 1 building occupying 1



lot. When more than 1 multiple dwelling building occupies 1 lot, the 2 or more structures must be separated by at least 20 feet when end to end and 50 feet when face to face or back to back for structures up to 2 stories. These isolation distances shall be increased by 8 feet for each story above the first 2 stories

**J. Accessory Buildings.**

- a. Private Garages - maximum height shall be 25 feet and if located in a rear yard it shall not be less than 8 feet from the rear of the lot line, and if located in side yard it shall not be nearer to the side lot line than the main building is permitted to be.
- b. Other Accessory Buildings. Maximum height shall be one story or 15 feet. Accessory buildings shall be located in a rear yard only and shall not be less than 8 feet from the rear or side lot line. Agricultural Zoned areas are excluded from this provision.
- c. Other accessory uses and buildings are permitted when located on the same lot as a permissible use.

**K. Residential Performance Standards.** Notwithstanding any requirements of any Building Code or other regulations pertaining to residential structures, the following performance standards shall apply to all housing constructed in or placed in Residential Districts and shall be in addition to the requirements of other codes, regulations, or provisions of these regulations. These requirements are to assure a degree of structural and aesthetic comparability between site built dwellings and pre-constructed or factory built housing intended for one (1) family occupancy. On site construction modifications may be necessary and shall be permitted to attain the standards of comparability.

- a. All dwelling units shall provide storage areas (either within a basement or in an attic, or in a separate, fully enclosed structure) of not less than 10% of the living area of the dwelling unit, exclusive of storage space for automobiles. Said storage areas shall not be counted in determining whether the dwelling unit complies with the minimum floor area requirements of these regulations.
- b. All dwelling units shall provide steps or porch areas, permanently attached to the foundation, where there exists an elevation differential of more than 1 foot between a door and the surrounding grade.
- c. Standards for so called “Tiny House” structures, otherwise meeting all requirements of the residential building code as amended, and where permitted, shall be designated in that zoning district.

**L. Aesthetic Standards.** Insofar as it is a reasonable objective to maintain a degree of visual comparability between dwelling units in certain areas of the Reservation that have developed in a visually consistent manner, the following additional standards are promulgated. These

standards are geographically specific, and are based on the prevailing architectural standards and development patterns types that make up the character of the Reservation.

- a. The minimum width of any dwelling unit not designated as a Tiny House , either factory assembled or stick built, shall be 22 feet for at least 67% of its length.
- b. The core living area of any dwelling unit shall be an area 20 feet by 20 feet square.
- c. The roof pitch of any dwelling unit shall be at least 4.5 feet of rise for every 12 feet of run.
- d. All dwelling units must either have a roof overhang of not less than 6 inches on all sides, or a roof drainage system that concentrates collection points on one side of the building.

**M. Zoning Districts.** To achieve the aims and purposes set forth above, any lands under the jurisdiction of the Little Traverse Bay Bands of Odawa Indians are divided into the following districts. The current Zoning District applicable to each and every parcel regulated herein shall be clearly identified in the LTBB Land Base Restoration Plan, as amended, and approved by Tribal Council.

**N. Intent of All Residential Districts.** The Residential Districts set forth herein are established in order to protect public health, and promote public safety, convenience, comfort, morals, prosperity, and welfare. These general goals include among others the following specific purposes:

- a. To protect residential areas against fire, explosion, noxious fumes, offensive noise, smoke, vibrations, dust, odors, heat, glare, and other objectionable factors.
- b. To protect residential areas to the extent possible and appropriate in each area against unduly heavy motor vehicle traffic especially through traffic, and to alleviate congestion by promotion of off-street parking.
- c. To protect residential areas against undue congestion of public streets and other public facilities by controlling the density of population through regulation of the bulk of buildings.
- d. To protect and promote the public health and comfort by providing for ample light and air to buildings and the windows thereof.
- e. To promote public comfort and welfare by providing for usable open space on the same zoning lot with residential development.
- f. To provide sufficient space in appropriate locations to meet the probable need for future residential expansion and to meet the need for necessary and desirable services in the

vicinity of residences, which increase safety and amenity for residents and which do not exert objectionable influences.

- g. Nothing in these regulation shall prevent the establishment or maintaining of small agricultural plots or gardens, or household composting in Low Density Suburban Residential, Medium Density Cluster Residential and Forest/Recreational/Conservation Districts.
- h. Nothing in these regulation shall prevent the establishment or maintaining of small hobby farm animals in Low Density Suburban Residential, Medium Density Cluster Residential and Forest/Recreational/Conservation Districts. A schedule that delinates amount of allowable animals will be submitted to Tribal Council for approval.

1. **Low Density Suburban Residential.** The purpose of this district is to maintain certain areas within the Tribe's zoning jurisdiction as primarily agricultural and sparsely developed. Low Density is defined as no more than one dwelling unit per every ten acres of land.

- a. Uses permitted by right.
  - i. Detached single family homes, meeting the ICC standards for construction, of not less than 960 square feet in area, not including porches and appurtenances.
  - ii. Duplex-type two family homes, meeting the ICC standards for construction, of not less 760 square feet in area for each dwelling unit, not including porches and appurtenances.
  - iii. Community centers and other quasi-governmental buildings, directly related in purpose to the development and residents thereof.
  - iv. Sweat lodges and other traditional structures of a transient use.
  - v. Home Occupations that do not involve any outdoor activity not typical in a residential area, subject to the Home Occupation, Signage and Lighting regulations found herein.
  - vi. Farms and agricultural operations
  - vii. Golf Courses
  - viii. Green Cemeteries or Traditional Cemeteries
  - ix. Public Parks and camping grounds, including semi-improved cabins, of not more than 5 units per acre with a maximum of 20 units.
- b. Dimensional Requirements
  - i. See Table 1 (page 73)

- c. Special Land Uses eligible for approval
  - i. Nursery schools, preschool and day care centers, subject to Tribal or State licensing requirements.
  - ii. Planned Unit Developments.
  - iii. Public and private utility facilities not approved as part of a subdivision plat.
  - iv. Religious institutions.
  - v. Swim and/or tennis clubs not for profit.
- d. Additional Setback
  - i. All lots in this district which may share a boundary with U.S. 31, U.S. 131, or other roadway designated a U.S. Highway in the future are required to maintain an additional setback of 40 feet beyond that which is stipulated in Table 1. This additional setback shall maintain not less than 80% of its area as natural vegetation and forest cover.
- e. Clustering Density Bonus. In order to maintain the inherently undeveloped overall nature of this district, a Density Bonus from .5 dwelling units per acre to .75 dwelling units per acre can be awarded for developments of at least 15 acres where over 50% of the land is deeded in perpetuity to open space or forest preservation. This calculation cannot include wetlands, river frontage, or any required setback or other greenbelt area.

**2. Medium Density Cluster Residential.** It is the purpose of the Medium Density Cluster Residential District to provide for the most efficient use of limited residential land use resources while also providing open space, access to forested and riparian areas, and recreational opportunities for residents. This district has among its goals the concentration of residential areas within a larger parcel; establishment of areas for recreation, natural preservation, cultural use, and scenic views; and designation of nearby areas for multiple light density commercial uses tailored to the needs of the development. In this context, Medium Density is defined as the range of one dwelling unit per every two to three acres of land.

- a. Uses permitted by right. The following uses are permitted by right, and require only a zoning permit and review by the Zoning Administrator for height and bulk requirements:
  - i. Detached single family homes, meeting the ICC standards for construction, of not less than 960 square feet in area, not including porches and appurtenances.
  - ii. Duplex-type two family homes, meeting the ICC standards for construction, of not less 760 square feet in area, not including porches and appurtenances.

- iii. Community centers and other quasi-governmental buildings, directly related in purpose to the development and residents thereof.
  - iv. Sweat lodges and other traditional structures of a transient use.
  - v. Green Cemeteries or Traditional Cemeteries
  - vi. Home Occupations that do not involve signs, customers coming to the residence, or any outdoor activity not typical in a residential area, pursuant to the stipulations elsewhere in these regulations.
- b. Uses permitted by special review. The following uses are permitted as a general rule, but only after a review by the Zoning Administrator to ensure compatibility with existing uses and limitations on any detrimental effects from the proposed use.
- i. Business and industry located in designated areas.
  - ii. Planned or mixed use developments.
  - iii. Government buildings and operations.
  - iv. Churches.
  - v. Recreational facilities.
  - vi. Farming.
  - vii. Home occupations that involve a sign, customers coming to the residence, or any outdoor activity not typical in a residential area, pursuant to the stipulations elsewhere in these regulations.
  - viii. Other similar uses consistent with the management objectives and purposes set forth in this Section.
- c. Lot, setback, and other dimensional requirements. Since it is the intent of this district to promote compact, yet secluded residential development, the dimensional requirements in this section have been selected to fulfill these contradictory elements in the most feasible manner.
- i. Minimum overall development size is 20 acres.
  - ii. Minimum individual lot size is 17,000 square feet. This assumes an overall density of not more than .5 dwelling units per acre.
  - iii. Minimum front yard setback is 5 feet.
  - iv. Maximum front yard setback is 75 feet.

- v. Minimum side yard clearance is 10 feet.
  - vi. Minimum rear yard setback is 35 feet.
  - vii. Minimum lot width when abutting a residential street is 75 feet.
  - viii. Maximum building height is two stories or 35 feet, consistent with equipment capabilities of local fire fighting agencies.
  - ix. One accessory building is permitted, with an area not to exceed 1000 square feet, or one half the dwelling unit size, whichever is less. The sidewall of said accessory building shall not exceed 10 feet in height. Garages for the storage of automobiles are considered accessory buildings. Accessory buildings are not permitted in the required yard set back area.
  - x. Land within the right-of-way of public roads shall be included in all density calculations.
- d. General Requirements.
- i. Public water and sewerage facilities shall be available to serve the cluster subdivision.
  - ii. Common "open space" shall not be less than fifteen percent (15%) of the gross acreage of any tract submitted for cluster subdivision.
  - iii. A maximum of fifty percent (50%) of the required open space may be steep slopes, streams, ponds, watercourse, and flood plain.
  - iv. The land derived from reduction of lot sizes shall be provided and maintained as "open space", "traditional areas" or "recreational areas".
  - v. Lots shall not be further subdivided and the Record Plat shall so indicate.
  - vi. All lots shall be designed and located to minimize potential environmental degradation of the natural resources.
  - vii. Access arrangements to open spaces shall be carefully designed and located to enable perpetual maintenance and accessibility.
  - viii. No lot shall be created or designed in which the depth is more than 5 times the width.
  - ix. The maximum coverage of any lot by impermeable surfaces, including structures, pavement, and sidewalks, shall be 25%.

3. **Multi-Family / Mixed Residential.** The purpose of this district is to provide an area for multi-family apartment buildings, single family and duplex dwelling units within the same neighborhood. The Multi-Family Residential District is designed to provide sites for high density Multi-Family dwelling structures which will generally serve as a zone of transition between lower density single family residences and the denser Central Business District.

a. Uses Permitted by Right

- i. Elementary schools, junior high schools, and senior high schools that do not have boarding facilities.
- ii. Parks, playgrounds, and forest preserves.
- iii. Multiple-family detached and attached dwellings.
- iv. Accessory dwelling units (ADU), up to three, associated with an existing single family dwelling unit, consistent with the definition of Tiny House.
- v. Public and private utility facilities approved as part of a subdivision plat.

b. Uses permitted by special review.

- vi. Civic buildings.
- vii. Nursery schools, preschool and day care centers, subject to State licensing requirements.
- viii. Planned Unit Developments.
- ix. Accessory dwelling units not associated with a principal unit, consistent with the definition of Tiny House.
- x. Public and private utility facilities not approved as part of a subdivision plat.
- xi. Religious institutions.
- xii. Swim and/or tennis clubs not for profit.

c. Dimensional Requirements

- i. See Table of Dimensional Requirements (page 73)
- ii. ADU's are subject to Section 304 and 306 of the Residential Building Code for floor area, as well as the following:

1. Each dwelling unit shall have a minimum gross floor area of not less than 170 square feet for the first occupant and not less than 100 square feet for each additional occupant.
  2. Required space in sleeping rooms. In every dwelling unit of two or more rooms, every room occupied for sleeping purposes by one occupant shall contain at least 70 square feet of floor space, and every room occupied for sleeping purposes by more than one occupant shall contain at least 50 square feet of floor space for each occupant thereof.
  3. Minimum ceiling height. Every habitable room, foyer, bathroom, hall or corridor shall have a ceiling height of at least seven feet. If any room has a sloping ceiling, the prescribed ceiling height for the room is required in only one-half the area thereof, but the floor area of that part of any room where the total floor area of the room for the purpose of determining the maximum permissible occupancy thereof.
  4. Structure width. The minimum width of a tiny home must be at least 8.5 feet, with a maximum of 20 feet.
  5. Setback – 4 foot minimum side and rear setback from property line. No side or rear setback required if ADU will replace preexisting buildings on the property line.
  6. Parking - tandem parking in driveway is allowed including non-conforming driveways.
4. **Forest / Recreational / Conservation.** The purpose of these districts is to preserve lands for hunting, gathering, recreation, and the conservation of plants, animals and general genetic diversity. There shall be no dwelling units or commercial structures or development within this district. Only Tribal governmental developments consistent with the purposes of this district with minimal environmental impact, such as small biological services buildings, trails and minimal roads, are permitted in these districts
- a. The following public benefits are realized by meeting this primary objective:
    - i. Encouraging continuation of large contiguous tracts of forest land in private and public ownership to provide forest resources, cultural preservation and outdoor recreation.
    - ii. Encouraging forestry and timber harvesting and permitting other compatible land uses.
    - iii. Preserving scenic views.
    - iv. Protecting wildlife habitat.



- v. Protecting water quality of surface waters throughout the watershed.
  - vi. Protecting natural areas; avoiding the burden of unreasonable governmental expenditures for the purpose of providing services to locations which are remote and difficult to access.
  - vii. Avoiding the risk to health and safety of employees and volunteers of providing emergency services to locations which are remote and difficult to access.
- b. Uses Permitted by Right. The following uses are permitted in the Forest Conservation District:
- i. Forestry, tree farming and nurseries. Timber harvesting operations shall be conducted in accordance with best management practices so as to prevent soil erosion and damage to surface waters.
  - ii. Agriculture.
  - iii. Wildlife refuges, requiring no structures.
  - iv. Publicly-owned recreational facilities, such as parks and other active and passive outdoor recreation uses, requiring no structures.
  - v. Conservation areas and nature and hiking trails.
- c. Uses Permitted by Special Review
- i. Hunting Cabins
  - ii. Government Buildings for promoting environmental or natural resources
  - iii. Utility building for promoting environmental or natural resources
  - iv. Green Cemeteries or Traditional Cemeteries
  - v. Temporary sawmills.
  - vi. Water storage facilities.
  - vii. Structures for publicly-owned recreational facilities, such as parks and other active and passive outdoor recreation uses. Any proposed structure must be for outdoor recreational use and have a minimal impact, such as a ski warming hut or hiking shelter.
  - viii. Privately-owned tax exempt recreational facilities available to the public for active and passive outdoor recreational uses. Any proposed structure must be for

outdoor recreational use and have a minimal impact, such as a ski warming hut or hiking shelter.

- ix. Structures within wildlife refuges. Any proposed structure must be for the wildlife refuge use and have a minimal impact.

d. Other Requirements

- i. Lot Size & Density. The minimum lot size in the Forest Conservation District is 50 acres, per which shall be permitted one principle building.
- ii. Setbacks. There shall be a minimum distance of 50 feet between any building and the edge of the right-of-way for any road or public way or any lot boundary.
- iii. Road Frontage. The Minimum Road Frontage shall be 300 feet.
- iv. Building Height. No building or structure, or part thereof, shall exceed 35 feet in height as measured from the high point thereof to the average natural or graded permanent ground level at the wall of the structure nearest to and below said high point, provided, however, that this provision shall not apply to television and radio antennae, lightning rods, cupolas, steeples, chimneys, utility poles or silos.

5. **Highway Commercial.** The purpose of this district is to provide sites for the development of Tribal commercial enterprises, and other businesses owned by tribal members or others when the Tribal Council determines through official action that the location of such non-member businesses within this district is in the best interests of the Tribe. In particular, the Highway Commercial district is established to provide suitable locations in the area's heavily traveled collector streets and arterial highways for those commercial and business uses which are oriented to the automobile and which require access characteristics independent of adjoining uses or pedestrian trade. The application of the HC District should be to those areas of the reservation where individual uses can be grouped into planned concentrations which limit the "strip" development effect on newly developing areas as well as on redevelopment areas where retail and business uses currently exist. Adequate transportation and site planning of district uses should have the goal of minimizing conflicts with through-traffic movements along the major transportation corridors. It is not intended for this district to be applied to shopping centers.

- a. Permitted Uses: An individual use or structure intended for a single use with 40,000 square feet gross floor area or less, incorporating the following uses:
  - i. Such uses as medical clinics, dental clinics, barber shops, beauty shops, animal hospitals, kennels, real estate offices, group day care homes and motor vehicle servicing, repair and maintenance businesses and business services and supply establishments.

- ii. Gasoline sales establishments (with no vehicular repair services or storage).
- iii. Eating establishments, without drive-thru facilities. Fast-food restaurants, with drive-thru facilities.
- iv. Banks and financial Institutions.
- v. Funeral homes.
- vi. Hotels and motels.
- vii. Offices, general and professional. Personal service establishments. Plant nurseries.
- viii. Convenience or quick-service food stores, with or without gasoline sales but no vehicle repair.
- ix. Repair service establishments (exclusive of automobile and light vehicle service and repair), with no outdoor storage.
- x. Retail sales establishments, with screened outdoor sales or display of products limited to no greater than 15% of the net developable lot area.
- xi. Automobile and light vehicle dealerships and retail sales establishments (with service and repair facilities as an ancillary use, with completely enclosed service facilities and screened outdoor storage of repair vehicles).
- xii. Theaters.
- xiii. Light intensity wholesale trade establishments (with no outdoor sales or display of products).
- xiv. Kennels, commercial.
- xv. Private post office and delivery services.
- xvi. Public Governmental uses.
- xvii. Churches and places of worship.
- xviii. Medical offices and outpatient care facilities.
- xix. Parking lots (private and public with off-street parking as the principal use).
- xx. Private schools.
- xxi. Veterinary clinics (with no outdoor kennel facilities).

- xxii. Car washes.
- xxiii. Laundromats. Dry cleaners.
- xxiv. Taxicab Service.
- b. Uses permitted by Special Review, including those listed above but which exceed 40,000 square feet of gross floor area.
  - i. Repair service establishments, with screened outdoor storage.
  - ii. Retail sales establishments, with screened outdoor sales or display of products which exceed 15% of the net developable lot area. (See Additional Regulations.)
  - iii. Conference centers.
  - iv. Bars, pubs, breweries and similar establishments.
  - v. Hospitals.
  - vi. Parking garages and structures.
  - vii. Commercial recreation facilities (indoor and outdoor). Child day centers.
  - viii. Adult day care centers. Bus stations.
  - ix. Public utilities.
  - x. Drive-in and movie theaters. Auction establishments.
  - xi. Automobile and light vehicle repair establishments (within completely enclosed structures with screened outdoor storage).
  - xii. Vehicle sale, rental and ancillary service establishments, including boats and watercraft. Service stations.
  - xiii. Light warehousing uses related to an adjunct retail use permitted either by-right or special permit.
  - xiv. Frozen food lockers.
  - xv. Greenhouses (retail and wholesale).
  - xvi. Waterfront retail business activities associated with the uses in this article, including boat docks and piers, yacht clubs, marinas and boat service facilities, storage and shipment of waterborne commerce, fish and shellfish receiving, seafood packing and shipping and recreational activities.

- xvii. Taxidermists.
- xviii. Bed and breakfast establishments.
- xix. Research and development activities which do not cause any more smoke, dust, odor, noise, vibration or danger of explosion than other uses permitted in this district and which involve no more than 15% of the gross floor area in the assembling or processing of products. All assembling or processing shall only involve products developed on the premises. All services and storage shall be conducted within the principal structure which is to be completely enclosed.
- xx. Any use incorporating a drive-thru facility. Schools, colleges and universities.
- xxi. Mini-storage warehouses, with no exterior storage.
- xxii. Waiver of yard requirements, subject to the prohibition of parking in front yards. Waiver for increase in building height over 35 feet.
- xxiii. Waiver of Parking and Loading Requirements.
- c. Open Space and Landscaping: 15% of the gross site area shall be landscaped open space.
- d. Net Developable Area Calculation:
  - i. Notwithstanding governing lot size and yard regulations, the maximum use intensity for any lot shall be calculated based on existing land conditions. The development yield (in terms of allowable lots or floor area) shall be based on its net developable area, with adjustment factors for physical land units as specified in the chart in the following section.
  - ii. The subdivision plat and/or site plan for a project shall graphically depict the location and area for the physical land units as outlined herein below. A calculation of the net developable area shall be required for all subdivision and site plan submissions.
  - iii. No credit towards net developable area shall be given for planned public rights-of-way, private streets, travelways and combined travelways and parking bays within a lot or property to be developed or subdivided. Twenty percent (20%) shall be subtracted from the calculated net developable acreage to allow for street rights of way, unless it can be demonstrated by survey calculations to the satisfaction of the Planning Department that proposed street rights of way, private streets, travelways and combined travelways and parking bays in a subdivision will be less than 20% percent of the calculated net acreage.

- iv. No HC District lot shall be designed or employed for use in which an area more than 25% of the prescribed minimum lot area is comprised of one or more of the following physical land units: (a) slopes 30% or more, (b) wetlands, (c) 100-year floodplains and (d) water features

<b><u>Physical Land Unit</u></b>	<b><u>Percent Credited Toward Net Acreage</u></b>
Slopes less than 10%	100%
Slopes from 10% but less than 20%	75%
Slopes from 20% but less than 30%	50%
Slopes 30% or more	10%
Soils with high shrink/swell characteristics as defined	75%
Wetlands, existing water features and streams	0%
Stormwater management basins and structures	0%
Above ground 69 KV or greater transmission lines	0%
Public right of way	
Private streets, travelways and combined travelways and parking bays	0%

- v. All uses shall be subject to site plan approval
- vi. All refuse shall be contained in completely enclosed facilities. Refuse containers and refuse storage shall be located in a paved area and screened from public view by means of fences, wall or landscaping.
- vii. On a corner lot, no curb cut shall be located closer than 75 feet to the right of way line extended from the intersecting street. In addition, on all lots, no curb cut shall be located closer than 20 feet to a side or rear lot line, unless a common curb cut serves adjacent uses, and in no instance shall the distance between separate curb cuts serving adjacent uses be less than 60 feet.
- viii. Gasoline pump islands, canopies and structural elements shall be governed by the same regulations as applied to a principal structure.
- ix. Off-street parking facilities should be located within the side or rear yards whenever possible.
- x. Any subdivision or lot which is proposed to be developed on shrink/swell soils shall require a geotechnical report to be submitted with the preliminary plat and plans. Such report shall be prepared by a registered professional engineer and shall address the feasibility of development on the subject soils. No subdivision plat or site plan shall be approved for final recordation until a foundation engineering report has been reviewed by the Tribe. All recorded plats for lots containing shrink/swell soils shall bear the following note: "This lot contains shrink/swell soils which require special engineering design for foundations and

structural elements. No structure will be approved for issuance of a building permit until a foundation engineering design prepared by a certified professional engineer has been approved for the proposed structure."

**6. Central Business District/Mixed Use.** The CBDMU allows for a mix of uses including semidetached dwellings, townhouses, multi-family dwellings, and accessory apartments as well as neighborhood facilities within a neighborhood center and commercial uses within a commercial center. The intent is to provide for a "town center" in various locations, where appropriate, from which other development can grow in a geographically consistent pattern.

- a. The following public benefits are realized by meeting this primary objective, as outlined in the LTBB Master Land Use Plan:
  - i. Reducing infrastructure costs by minimizing the amount of infrastructure necessary.
  - ii. Providing an efficient, varied and, innovative development pattern.
  - iii. Establishing a pedestrian-oriented, multi-modal community.
  - iv. Making public transit viable by encouraging development at appropriate densities.
  - v. Fostering a sense of community by developing neighborhoods and public spaces.
  - vi. Encouraging development that complements the distinctive resources of the site.
  - vii. Providing opportunities to integrate age and income groups through housing choice.
  - viii. Creating community character and complementing historic development styles.
- b. Minimum requirements for development under the neighborhood design option. Each neighborhood design development shall meet all of the following minimum requirements:
  - i. The neighborhood development tract shall be not less than 10 acres in area.
  - ii. The neighborhood development tract shall be developed according to a single plan that depicts complete build-out of the neighborhood development tract with common authority and responsibility. If more than one person has an interest in all or a portion of the neighborhood development tract, all persons with interests in any portion of the neighborhood development tract shall join as applicants and shall present an agreement, in a form acceptable to the Tribe, guaranteeing that the neighborhood development tract as a whole shall be developed in accordance with any approval granted under these regulations as a single neighborhood development with common authority and governing documents.

- iii. All dwelling units and principal buildings shall be provided with public water service and public sewer service, or an alternative wastewater system as deemed appropriate by the Indian Health Service.
- iv. The neighborhood development shall be provided with common open space in accordance with this section.
- v. The neighborhood development shall be provided with a neighborhood center.
- vi. At the time of completion of construction, no more than 70% of the neighborhood development tract may be covered with impervious surface, unless a greater impervious surface coverage is permitted through the use of density incentives set forth herein.
- vii. Each neighborhood development shall be provided with at least one green space containing not less than 10,000 square feet. The size of the green shall be increased to a minimum of 15,000 square feet for a development of 51 to 149 dwelling units, and a minimum of 20,000 square feet for a development of 150 or more dwelling units. Other green spaces, squares, and commons areas of not less than 1,000 square feet in area shall be dispersed throughout the neighborhood development.
- viii. The design of a hard- or soft-surfaced pedestrian and bicycle network system linking development within the neighborhood development shall be provided to connect various commons, squares and greens depicted on the open space plan. Access to all such areas shall be provided from public streets. Where necessary, easements shall be provided to accommodate pedestrian access as well as access for maintenance equipment and bicycles.
- ix. Street lighting. The development shall provide streetlights within the neighborhood development in a manner consistent with the Master Land Use Plan guidelines and acceptable to the Tribe. Lighting shall be used to increase the safety of pedestrians as well as vehicles while contributing to the character of the overall neighborhood development.
- c. Uses Permitted by Right. The following uses are allowed within a neighborhood development, in accordance with the requirements herein.
  - i. Single-family semidetached dwellings (twin dwellings).
  - ii. Duplexes.
  - iii. Townhouses.



- iv. Multifamily dwellings.
- v. Accessory apartment units.
- vi. Neighborhood facilities within a neighborhood center.
- vii. Within a neighborhood center or a commercial center (where allowed), the following uses shall be allowed: retail sales, offices, exercise clubs, child or adult day-care centers, financial institutions, and personal service establishments. The retail and service uses may include but are not limited to a newsstand, coffee shop, drugstore, restaurant, hair and/or nail salon, gift shop, theater, bakery, specialty food store, dry cleaner (dropoff only), bike sales/rental, copy center, barbershop or another use which Tribe determines during the conditional use approval process is substantially similar to the listed uses. The applicant may list a proposed range of uses that will be allowed. If such range of uses is approved as part of the conditional use approval, then each such use shall become permitted by right, provided the use and development conforms to the conditional use approval.
- viii. In a neighborhood center, the total of all commercial uses shall not exceed 70% of the building floor area of the neighborhood center.
- ix. In addition to a neighborhood center, a commercial center shall be allowed if all of the following standards are met:
  - 1. The neighborhood development will be adjacent to a street classified as an arterial street or a major collector street;
  - 2. The commercial center will have vehicle access available to reach a second street that is classified as an arterial or major or minor collector street;
  - 3. The traffic from the commercial center will be able to access an arterial street or major or minor collector street without having to travel through a residential area;
  - 4. The commercial center shall have shared parking among the various uses and an internal vehicle access system that avoids the need for a commercial use to have its own driveway onto a preexisting public street; and
  - 5. The total land area occupied by a commercial center and related parking areas shall not exceed a maximum of 70% of the buildable area of the neighborhood development tract. The buildable area shall be the total tract area minus the ultimate/future right-of-way of preexisting public streets and minus 50% of all land areas that are wetlands, have 15% or greater slope, or are within the one-hundred-year floodplain.

- x. Drive-through facilities shall be prohibited, except for a drugstore or financial institution. A drive-through facility shall not have direct vehicle access onto an existing arterial or collector street.
- xi. Each commercial establishment shall have a maximum first floor building floor area of 4,000 square feet, except as part of the modification process allowed through the conditional use approval, this 4,000 square feet may be increased to 8,000 square feet for uses compatible with the District. Further, as part of the modification process allowed through the conditional use approval, the first floor square footage for one freestanding commercial establishment may be increased to 15,000 square feet, provided such freestanding commercial establishment is integrated into and made a part of the overall commercial center and such commercial establishment is a use expressly provided for above.
- xii. Fuel shall not be sold within a commercial center.
- xiii. For a nonresidential principal building, a minimum setback of 60 feet shall apply from the perimeter lot lines of the neighborhood development and a minimum setback of 30 feet shall apply from the future/ultimate right-of-way of preexisting public streets that form a perimeter of the neighborhood development. In other cases, a minimum front, each side and rear setback of 20 feet shall apply.
- xiv. Tribally-owned uses and government offices.
- xv. Museums.
- xvi. Places of worship and related uses.
- d. All dwelling units shall be situated so as to retain a view of some portion of the common open space and shall be located within 800 feet of a commons, square, green or trail.
- e. All lots shall maintain minimum front, rear and side yard setbacks of six feet, except as follows:
  - i. A minimum setback of 30 feet shall apply from the perimeter lot lines of the neighborhood development and from the future/ultimate right-of-way of preexisting public streets that form a perimeter of the neighborhood development.
  - ii. Any building including townhouses or three or more multifamily dwelling units shall be set back a minimum of 60 feet from the lot line of an existing single-family detached dwelling that is not within the neighborhood development.
- f. No dwelling units within a neighborhood development shall have direct access to preexisting streets surrounding the neighborhood development tract. All access shall be from an internal street system designed to service the neighborhood development.

- g. Where several townhouse buildings are located on one lot, the following separation distances shall be applicable:
  - i. Front to front, rear to rear or front to rear parallel buildings shall have at least 50 feet between faces of the building. If the front or rear faces are obliquely aligned, the above distances may be decreased by as much as 10 feet at one end, if increased by similar or greater distance at the other end.
  - ii. A minimum yard space of 30 feet is required between end walls of buildings where both end walls contain windows, and 20 feet otherwise. If the buildings are at angles to each other, the distance between the corners of the end walls of buildings where both end walls contain windows may be reduced to a minimum of 20 feet.
  - iii. A minimum yard space of 30 feet is required between end walls and front or rear faces of buildings.
- h. Neighborhood centers. Each neighborhood development shall include a minimum of one neighborhood center. Each neighborhood center shall comply with the following:
  - i. Uses are limited to those that residents are likely to need on a daily or regular basis.
  - ii. The overall size and type of each use within the neighborhood center is restricted to prevent the establishment of intensive commercial-type facilities that exceed the local orientation. See maximum size of commercial establishments in Subsection H.
  - iii. Each use other than a neighborhood facility within a neighborhood center shall be designed to provide basic convenience commercial goods and services to existing and future nearby residences.
  - iv. The maximum land area permitted to be devoted to the total of all neighborhood center buildings shall be no more than 25% of the gross land area of the neighborhood development tract, except where provided otherwise under Subsection I(2).
  - v. All neighborhood centers shall be provided with convenient pedestrian access. Any necessary off-street parking facilities shall be located to the side or rear of the principal building.
  - vi. The adaptive use of historical structures on the neighborhood development tract is a preferred option for the siting of a neighborhood center. However, when new construction must be undertaken, the design of such structure(s) shall not detract from the community character of the neighborhood development and the surrounding area. Historical structures are defined as within an existing historical district or on the

National Register of Historic Places, as previously designated or as designated by the Tribal Historic Preservation Officer.

- i. Required parking. All uses within the neighborhood development shall be provided parking in accordance with this Subsection.
  - i. The amount of off-street parking required for all dwelling units and for noncommercial uses shall be in accordance with all regulations herein.
  - ii. The amount of parking for commercial uses shall be one parking space for each 350 square feet of gross floor area. The parking shall be provided either on the neighborhood/commercial center lot or in designated on-street or off-street parking areas within 500 feet of the neighborhood/commercial center buildings or by a combination thereof.
  - iii. As part of the conditional use process, the Tribe may reduce the amount of required off-street parking for principal nonresidential uses by up to 10% if three or more principal nonresidential uses will share the same parking area.
  - iv. Where necessary, parking requirements may be met through the provision of off-street parking compounds. No more than 50% of the required parking should be provided by means of off-street parking lots. When required to accommodate the parking requirements of any specific use, off-street parking lots shall be located to the side or rear of the buildings they are intended to serve. The size and/or location of parking lots shall not compromise the design or interfere in any manner with provision of pedestrian access. All nonresidential uses shall adequately accommodate both handicap parking and bicycle parking.
- j. Sidewalks. Sidewalks are to be provided on both sides of all streets within the neighborhood development as well as along existing streets connecting the neighborhood development to existing or future development adjacent to the neighborhood development tract.
  - i. Sidewalks shall be no less than four feet wide in residential areas and no less than five feet wide in areas providing access to neighborhood facilities within the neighborhood development or commercial areas within or adjacent to the neighborhood development tract.
  - ii. Sidewalks shall be separated from street curbs by a planting strip or tree lawns not less than three feet wide.

**7. Gaming PUD with related uses.** It is the intention of this use district to permit maximum flexibility in the development of gaming and related land uses, for the benefit of the Tribe and its citizens. The intent of the Planned Unit Development regulations is to provide a zoning

regulatory process that encourages planning and design, resulting in plans for particular sites that fulfill the goals and objectives of the Master Land Use Plan while achieving development that could not be achieved under other types of zoning regulations. It is the further intent of these regulations to permit development in accordance with such plans for particular sites, provided that the plans are prepared and adopted in accordance with the regulations in this Article. In keeping with that principle, and those of the LTBB Master Land Use Plan, the following design and site standards are promulgated:

- a. **Planned Unit Development.** Gaming Developments and ancillary uses shall be developed as part of a Planned Unit Development, the minimum size of which shall be 7.5 acres that can be comprised of a single or multiple parcels of contiguous land.
- b. The design standards in this Section shall be used as a guide for design of PUD. However, modifications to these standards may be approved by the Tribal Council in conjunction with approval of the Concept Plan, upon receiving an advisory recommendation from the Planning Department, upon making the determination that other standards would be more appropriate because of the particular design and orientation of buildings and uses, and provided that any such modified standards shall be consistent with the intent of the PUD stated herein. Design and zoning standards modifications approved in conjunction with the approval of a PUD Concept Plan shall not require approval of the Zoning Board of Appeals.
- c. **Building Design & Orientation.** Architectural design and the relationship of a building to the site are both critical components of successful design. Buildings should be designed with the following design elements:
  - i. Buildings that have long walls should use varied setbacks or architectural details to reduce the perceived length and mass of the building.
  - ii. Sites with multiple buildings should contain compatible design elements and a strong visual relationship between buildings.
  - iii. Buildings should be used to obscure the service areas, including garbage storage enclosures, loading docks and delivery areas, mechanical equipment and other similar necessities which may distract from the overall appearance of the corridor.
  - iv. Buildings should reflect the unique style of the Tribe and not develop according to a standard ‘corporate’ or ‘franchised’ style that is typically found with big-box retail or other national businesses.
  - v. **Building Materials & Facade Treatments.** Buildings should be constructed of a high quality design which creates an aesthetically pleasing atmosphere. Building materials and facade treatments should generally utilize the following design elements.

Buildings should be constructed of durable, high quality materials. The primary building material should be brick, masonry, or stone. Fiberglass, reinforced concrete, polymer plastic (fypon), Exterior Insulation and Finishing Systems (EIFS), or dryvit materials may be used for accent purposes only. Highly reflective materials are also discouraged.

- vi. Exterior finish colors should fit into the context of the built environment. Subtle earth-tones are preferred over stark or bright colors.
  - vii. Neon lighting should not be permitted on the building exterior unless approved by Tribal Council on a case by case basis.
  - viii. Provide variation within the roof line, including raised/decorative parapet over the primary customer entrance, peaked roof forms, and/or dimensional details at the cornice level.
- d. Setbacks: PUD shall comply with the following minimum setback requirements, which shall be determined by the same method as determination of setbacks in other zoning districts, unless otherwise indicated:

Location	Minimum Setback
Along perimeter, adjacent to public road	30 ft. <sup>1</sup>
Along perimeter, but not adjacent to a road	20 ft.
Along an internal road or driveway	<sup>2</sup>
Parking lot setback from adjacent public road	20 ft.
Setback between buildings within a PUD	<sup>b</sup>

- e. A smaller setback with a build-to line may be approved upon review of the Concept Plan in the interest of establishing a consistent relationship of the buildings to the street and sidewalk, so as to form a visually continuous pedestrian-oriented street front.
- f. Minimum setbacks within the development shall be based on good planning and design principles, taking into account the degree of compatibility between adjoining uses, compatibility between uses and roads and drives, sensitivity to the characteristics of the site, the need for free access for emergency vehicles, the need for adequate amounts of light and air between buildings, and the need for proper amounts of open space.

<sup>1</sup> A smaller setback with a build-to line may be approved upon review of the Concept Plan in the interest of establishing a consistent relationship of the buildings to the street and sidewalk, so as to form a visually continuous pedestrian oriented street front.

<sup>2</sup> Minimum setbacks within the development shall be based on good planning and design principles, taking into account the degree of compatibility between adjoining uses, compatibility between uses and roads and drives, sensitivity to the characteristics of the site, the need for free access for emergency vehicles, the need for adequate amounts of light and air between buildings, and the need for proper amounts of open space.

- g. **Maximum Height.** Buildings and structures taller than permitted by the underlying zoning proposed on the Concept Plan that are taller than the maximum height allowed in the underlying zoning district may be approved, upon making the following determinations:
  - i. **Light and Shadow.** Buildings or structures greater than forty (40) feet in height shall be designed so as to not have an unreasonable adverse impact on adjacent property as a result of the shadows that are cast or glare created from reflected or artificial light.
  - ii. **Privacy.** Buildings or structures greater than forty (40) feet in height shall be designed to avoid infringing on the privacy of adjacent public and private property, particularly adjacent residential areas.
  - iii. **Scale of Development.** Buildings or structures greater than forty (40) feet in height shall be compatible with the scale of the neighborhood or area in which they are situated in terms of relative height, height to mass, and building or structure scale to human scale.
- h. **Parking and Loading.** Parking and loading facilities in PUD shall comply with the standards herein. However, the minimum number of parking spaces required may be modified, based on evidence that other standards would be more reasonable because of the level of current or future employment, the level of current or future customer traffic, shared parking by uses that have peak parking demands that do not overlap, and other considerations. A decision to reduce the number of parking spaces shall be based on technical information provided by a qualified planning, parking or traffic consultant, that verifies that the reduction will not impair the functioning of the developments served, or have an adverse impact on traffic flow on or adjacent to the development.

In conjunction with a decision to reduce the number of required parking spaces, the Tribe may require the execution, by the developer, of an Agreement, that commits the developer to the provision of additional parking spaces, up to the minimum required if and when such are determined to be necessary within a specified period of time. This Agreement may be part of the PUD agreement, as provided for herein.

- i. **Open Space in PUD with Residential Component.** PUD containing a residential component shall provide usable open space that is accessible to all residents of the development. Such open usable space shall not consist of required yard areas or storm water retention or detention ponds (except as identified below) and shall be identified on the Concept and Detail Plans. The amount, location, shape, and other characteristics of open space within a development shall be based on good planning and design principles, taking into account the following considerations:
  - i. The types and arrangement of uses on the site;

- ii. The proposed uses of the open space and types of improvements proposed within the open space;
- iii. The extent to which the leisure and recreation needs of all segments of the population residing in the development would be accommodated; and
- iv. The manner in which the open space is integrated into the overall design of the development.
- v. Up to 50% of the surface area of stormwater management ponds may qualify as open space if the following conditions are met:
  - 1. All stormwater management ponds shall be integrated into the overall development and shall serve as a visual and physical amenity to the site. A visual and physical amenity is easily accessible to pedestrians and/or non- motorized vehicles and is visually attractive.
  - 2. All stormwater management ponds shall have a minimum permanent water depth of 4 feet and a maximum permanent water depth of 9 feet.
  - 3. The maximum slope of stormwater management ponds in a Planned Unit Development shall be 1:6.
  - 4. Fences around stormwater management ponds are not permitted.
  - 5. All stormwater management ponds shall have a natural appearance, and shall be round, oval, or kidney in shape with irregular edges.
  - 6. Recreation facilities such as walking paths shall be provided near and/or around stormwater management ponds to allow users of the site to use and enjoy the ponds as an amenity.
- j. Circulation System. The vehicular and pedestrian circulation system within each development shall safely and conveniently accommodate the movement of vehicles, bicycles, and pedestrians throughout the proposed development and to and from surrounding areas.
- k. Additional Considerations
  - i. Stormwater Detention or Retention. Stormwater detention or retention shall be provided in underground pipes or in open unfenced detention or retention basins, where feasible. These basins shall be incorporated into the landscaping or open space plan for the site. Best management practices in stormwater management are encouraged such as use of natural habitat to filter stormwater (bio-swales, rain gardens and phytoremediation), design to decrease the amount of impervious surfaces



(permeable paving, green roofs, and curbless parking areas and roads), and dissemination of stormwater in a natural manner (level spreaders and multiple, connected ponds).

- ii. Other Considerations. In their review of a proposed PUD, the Planning Department may review and provide guidance on other considerations that are found to be relevant to a particular project, including, but not necessarily limited to: road capacity; capacity and design of utility systems; achievement of an integrated development with respect to signage, lighting, landscaping, and building materials; and, extent to which noise reduction and visual screening are used, particularly in cases where non-residential uses adjoin residential uses.
- l. The Board of Zoning Appeals has no authority in matters covered by this Article. Modifications to plans or proposals submitted under this Article shall be processed in accordance with the amendment procedures covered under amendments to these regulations or other statutes.
- m. Any violation of the approved PUD Concept or Detail Plan or PUD Agreement shall be considered a violation of the Zoning Regulation, which shall be subject to the enforcement actions and penalties described herein.
- n. A PUD shall only be approved if it is found that the development satisfies all of the following standards:
  - i. Consistent with the Master Land Use Plan - The planned unit development advances Plan goals, including both reservation-wide and the specific area goals.
  - ii. Protects and Unifies Natural Systems - The planned unit development creates an effective and unified treatment of the development and preservation possibilities on the project site. The development plan must provide for the preservation or creation of unique amenities such as natural streams, stream banks and shore buffers, wooded cover, rough terrain, man-made landforms or landscaping and similar areas.
  - iii. Integrated with Surrounding Uses - The planned unit development is planned and developed to harmonize with existing or proposed development in the areas surrounding the project site.
  - iv. Ensures Sustainable Design of Buildings - The applicant ensures that buildings will be designed and constructed according to sustainable design standards adopted by the Tribal Building Code.
    - 1. Single Ownership - The tract under consideration is under single ownership or control

## **8. Light Industrial District.**

- a. Intent. The Light Industrial District is designed so as to primarily accommodate wholesale activities, warehouses, and industrial operations whose external, physical effects are restricted to the area of the district and in no manner affect in a detrimental way any of the surrounding districts. This district is so structured as to permit, along with specified uses, the manufacturing, compounding, processing, packaging, assembly, and / or treatment of finished or semi-finished products from previously prepared material. It is further intended that the processing of raw materials for shipment in bulk form, to be used in an industrial operation at another location, not be permitted.
- b. Uses Permitted by Right. The following uses are permitted by right:
  - i. Any light industrial or manufacturing activity which is entirely self-contained with regard to smoke, heat, glare and light, noise or other pollution, or which does not impact abutting properties in any way.
  - ii. Warehouses.
  - iii. Research or testing laboratories.
  - iv. Product distribution centers.
  - v. Woodworking shops.
  - vi. Furniture assembly.
  - vii. Machine shops.
  - viii. Boat and boat building yards.
  - ix. Indoor swap meets.
  - x. Breweries.
  - xi. Liquid fertilizer manufacturing.
  - xii. Regional recycling centers.
  - xiii. Minor automotive repair, automotive service stations.
- c. Uses Permitted by Special Review. The following special uses may be permitted in specific situations in accordance with the procedures outlined in these regulations, as appropriate:
  - i. Automobile service stations, repair facilities, and car washes used in conjunction with an automobile service station.

- ii. Boiler and tank manufacturing.
- iii. Eating and drinking establishments.
- iv. Garages for storage, repair, and servicing of motor vehicles, including body repair, painting and engine rebuilding.
- v. Heliports.
- vi. Planned unit developments.
- vii. Public and private utility facilities.
- viii. Recreation and social facilities.
- ix. Stadiums.
- d. Dimensional Requirements
  - i. See Table of Dimensional Requirements (page 73)

## **9. Farmland Preservation District**

- a. Purpose: The intent of this district is to maintain highly productive agricultural lands in food and fiber production by effectively limiting encroachment of non-agricultural development and minimizing land use conflicts among incompatible uses.
- b. Land Use in the Farmland Preservation District; General. Only the following land uses are allowed in a farmland preservation zoning district.
  - i. Uses allowed under Section (c.) as a permitted use.
  - ii. Uses allowed under Section (d.) with a conditional use permit.
  - iii. Prior nonconforming uses.
- c. Permitted Uses
  - i. Agricultural Uses
  - ii. Accessory Uses
  - iii. Agricultural-related Uses
  - iv. Nonfarm residences constructed in a rural residential cluster in accordance with an approval of the cluster as a Conditional Uses under Section (d.).
  - v. Undeveloped natural resource and open space areas.

- vi. A transportation, utility, communications, or other use that is required under Tribal or federal law to be located in a specific place or that is authorized to be located in a specific place under a Tribal or federal law that preempts the requirements of a special use permit for that use.
- vii. Tiny Houses subject to the requirements prevailing in the Tribal Building Code.

d. Conditional Uses

- i. Creation of a nonfarm residence or conversion of a farm residence to a nonfarm residence through a change in occupancy, subject to the following requirements.
  - 1. The ratio of nonfarm residence acreage to farm acreage on the base farm tract on which the residence is or will be located will not be greater than 1 to 20 after the residence is constructed or converted to a nonfarm residence.
  - 2. There will not be more than four dwelling units in nonfarm residences, nor more than five dwelling units in residences of any kind, on the base farm tract after the residence is constructed or converted to a nonfarm residence.
  - 3. The location and size of the proposed nonfarm residence parcel, and, for a new nonfarm residence, the location of the nonfarm residence on that nonfarm residential parcel, will not do any of the following:
    - a. Convert prime farmland from agricultural use or convert land previously used as crop land, other than a woodlot, from agricultural use if on the farm there is a reasonable alternative location or size for a nonfarm residential parcel or a nonfarm residence.
    - b. Significantly impair or limit the current or future agricultural use of other protected farmland.
  - 4. Creation of a nonfarm residential cluster that covers more than one nonfarm residence if all of the following apply:
    - a. The parcels on which the nonfarm residences would be located are contiguous.
    - b. Each nonfarm residence constructed in the nonfarm residential cluster must satisfy the requirements of section d(i).

5. Transportation, communication, pipeline, electric transmission, utility, or drainage uses, if all of the following apply:
  - a. The use and its location in the farmland preservation zoning district are consistent with the purposes of the farmland preservation zoning district.
  - b. The use and its location in the farmland preservation zoning district are reasonable and appropriate, considering alternative locations, or are specifically approved under state and federal law.
  - c. The use is reasonable, and designed to minimize conversion of land at and around the site of the use, from agricultural use or open space use.
  - d. The use does not substantially impair or limit the current or future agricultural use of surrounding parcels of land that are zoned for or legally restricted to agricultural use.
  - e. Construction damage to land remaining in agricultural use is minimized and repaired, to the extent feasible.
- e. Re-zoning Land Out of a Farmland Preservation Zoning District.
  - i. Except as provided elsewhere in these regulations, the LTBB may not re-zone land out of the farmland preservation zoning district unless the LTBB finds all of the following in writing, after public hearing, as part of the official record of the re-zoning:
    1. The re-zoned land is better suited for a use not allowed in the farmland preservation zoning district.
    2. The re-zoning is consistent with any applicable comprehensive plan.
    3. The re-zoning is substantially consistent with the LTBB Master Land Use Plan, which is in effect at the time of the rezoning.
    4. The re-zoning will not substantially impair or limit current or future agricultural use of other protected farmland.
- f. Standards for “Farm Residences”
  - i. A “farm residence” must be located on a farm parcel. A single-family or duplex residence may qualify as a “farm residence” if it is the *only* Residential structure on the farm (*regardless* of who occupies it).

- ii. An additional residence on the same farm may also qualify as a “farm residence” (even though it is not the *only* residential structure on the farm) if it is occupied by an owner or operator of the farm, a parent or child of the farm owner or operator, or an individual who earns more than 50 percent of his or her gross income from the farm. However, a change in occupancy may convert this “farm residence” to a “non-farm residence.”

g. Standards for “Non-Farm Residences”

i. Conditional Use Permit Required

- 1. A conditional use permit is *always* required for a “non-farm residence” (unless the residence *legally existed* as a “non-farm residence” prior to these regulations, and thus qualifies as a “prior nonconforming use”). The Zoning Administrator may issue a separate conditional use permit for each residence or, if a plan has been approved by Tribal Council, the Zoning Administrator may issue a single permit covering an approved *cluster* of “non-farm residences” (see below).

ii. Standards for Issuing Conditional Use Permits

- 1. A Zoning Administrator may issue a conditional use permit for a “non-farm residence” if ALL of the following standards are met:
  - a. Standard #1: The ratio of all “nonfarm residential acreage” to “farm acreage” on the “base farm tract” will not exceed 1 to 20 (0.05).

i. Examples:

A farmer operates a 200 acre farm when the farmland preservation ordinance is first certified under the new law (that 200-acre land area thus becomes a “base farm tract”). The farmer subsequently sells a 7-acre parcel, and the purchaser applies for a conditional use permit to build a “non-farm residence” on that 7-acre parcel. The proposed residence meets *Standards #1* because the ratio of “non-farm residential acreage” (7 acres) to “farm acreage” (now 193 acres) on the “base farm tract” does not exceed 1 to 20 ( $0.036 < 0.05$ ).

The same farmer then splits another 7-acre parcel, and the occupier of that parcel also applies for a conditional use permit to build a “non-farm residence.” The Zoning

Administrator may *not* issue a conditional use permit for that residence, because the ratio of “non-farm residential acreage” (now 14 acres) to “farm acreage” (now 186 acres) on the “base farm tract” would be greater than 1 to 20 ( $0.075 > 0.05$ ).

If the owner of the 200-acre farm had sold two 4-acre parcels, rather than two 7-acre parcels, the zoning authority could permit the construction of residences on *both* parcels, because the ratio of all “non-farm residential acreage” (8 acres) to “farm acreage” (192 acres) on the “base farm tract” would not exceed 1 to 20 ( $0.042 < 0.05$ ).

If the original 200-acre farm were split into two 100-acre farms, the “base farm tract” would still be 200 acres (because the size of the “base farm tract” is determined when the ordinance is certified, and remains unchanged regardless of subsequent farm consolidations or splits):

- If one of the 2 farmers sells a 7-acre parcel, the zoning authority may permit the purchaser to build a house on that parcel because the ratio of “non-farm residential acreage” (7 acres) to “farm acreage” (193 acres) on the “base farm tract” (still 200 acres) will not exceed 1 to 20 ( $0.036 < 0.05$ ).
- If the second farmer *also* sells a 7-acre parcel, the zoning authority may permit residential construction on one *but not both* of the 7-acre parcels because, if houses were built on both parcels, the ratio of all “non-farm residential acreage” ( $7+7=14$  acres) to “farm acreage” (186 acres) on the “base farm tract” would exceed 1 to 20 ( $0.075 > 0.05$ ).
- *However*, if each farmer sells two 2-acre parcels (rather than one 7-acre parcel), residences could be constructed on *all 4 parcels* because the ratio of all “non-farm residential acreage” (8 acres) to “farm acreage” (192 acres) on the “base farm tract” would *not* exceed 1 to 20 ( $0.042 < 0.05$ ).
- If the original 200-acre farm is later expanded by adding another 150 acres (creating a “farm” of 350 acres), the

“base farm tract” is still the original 200 acres for purposes of *Standard #1*. The 150 acres added from another “base farm tract” are still counted as part of that other “base farm tract” for purposes of *Standard #1*.



Table 1. Table of Dimensional Requirements

**Table of Dimensional Requirements**

Zoning District	Minimum lot area in square feet	Maximum density in Dwelling Units	Minimum Dwelling Unit Square Footage	Minimum Width	Minimum Depth	Minimum Front Yard	Maximum Front Setback	Minimum Side Yard	Minimum Rear Yard	Maximum Height	Maximum Lot Coverage
Low Density Suburban Residential	43,560	.1 du/acre	960	50 ft.	160 ft.	25 ft.	N/A	10 ft.	50 ft.	35 ft.	40%
Medium Density Cluster Residential	17,000	.5 du/acre	960	75 ft.	150 ft.	5 ft.	75	10 ft.	35 ft.	35 ft.	25%
Multi-Family / Mixed Residential	17,000	5 du/acre	See Note (1)	100 ft.	150 ft.	40 ft.	N/A	20 ft.	20 ft.	35 ft.	30%
Forest / Recreational / Conservation	2,178,000	N/A	N/A	300 ft.	200 ft.	50 ft.	N/A	50 ft.	50 ft.	35 ft.	N/A
Highway Commercial	87,120	0.5 du/acre	1,250	300 ft.	260 ft.	35 ft.	N/A	20 ft.	50 ft.	35 ft.	85%
Central Business District/Mixed Use	8,000	8 du/acre	N/A	40 ft.	75 ft.	6	60	6 ft.	6 ft.	35 ft.	70%
Gaming and Related Uses, PUD	435,600	N/A	N/A	250 ft.	150 ft.	N/A	N/A	N/A	N/A	40 ft.	N/A
Light Industrial	87,120	0.5 du/acre	1,250	300 ft.	260 ft.	35 ft.	N/A	20 ft.	50 ft.	35 ft.	85%
Special Land Uses	43,560	N/A	N/A	200 ft.	200 ft.	N/A	N/A	N/A	N/A	35 ft.	N/A

**Notes:**

This table is for informational purposes only. See Text of Zoning Regulations for full descriptions.

• du/acre = Dwelling Units per acre

• N/A = Not Applicable

1) Square footage shall be as follows:

One Bedroom Apartment = 500 Sq Ft

Two Bedroom Apartment = 750 Sq Ft

Three Bedroom Apartment = 900 Sq Ft

150 additional Sq. Ft for each additional bedroom

2) All Districts except for Low Density Suburban Residential require Site Plan review.

## **10. Special Review Land Uses.**

- a. Intent. This Article is intended to provide regulations for special land uses which may be necessary or desirable in certain districts, but have an actual or potential impact on neighboring uses that needs to be carefully regulated for the protection of Tribal citizens and the general public. This Article provides standards for the Zoning Administrator to determine the appropriateness of a given special land use based upon factors such as: compatibility with adjacent zoning and uses, location, design, size, intensity of use, impact on traffic operations, potential impact on the environment, demand on public facilities and services, equipment used and processes employed. A special land use permit is required for each use listed in the zoning districts as a special land use and this Article specifies the procedures and standards to be followed in granting such permits. A special land use shall not commence until a special land use permit is issued in accordance with these regulations.
- b. Special Land Uses that may be Permitted. Subject to the requirements and provisions of this Article, and notwithstanding the specific Special Land Uses subject to review in each District, the following special land uses may be permitted:
  - i. Modern Cemeteries;
  - ii. Crematories;
  - iii. Mausoleums;
  - iv. Radio, microwave or television antennas and towers (except satellite dish antennas) exceeding a height of 50 feet consistent with FAA & FCC regulations.
  - v. State or Tribal licensed residential facilities;
  - vi. Any use which the Tribe is required by law to permit in a District but which is not specifically mentioned as an authorized use for that district in this Regulation;
  - vii. General or specialized hospitals to provide care for human beings provided the specific conditions herein set forth in relation to such use are met;
  - viii. Homes for the elderly or retired, including an accessory child care facility to provide care primarily for the children of employees of the home, if the specific conditions and requirements provided by this Article for the use are met;
  - ix. Public libraries, public museums and public art galleries, and Tribal, Township, County, State or Federal office or service buildings.

- x. Country clubs and golf courses, provided the property contains ten acres or more of land and provided further that any buildings shall be located at least 50 feet from any other lot;
- xi. Essential service buildings, and other major essential service installations (which may or may not involve buildings) including, without limitation, structures and facilities such as towers, electric substations, gas regulator stations and substations, provided that the Zoning Administrator shall give consideration to any existing laws or the architecture, landscaping, setback, enclosures and other features of the building or installation and may impose reasonable conditions as deemed necessary to protect the neighborhood;
- xii. Natural resources utilization, exploitation, mining of development, provided the specific conditions hereinafter set forth in relation to such special use are met and provided further that water wells shall be considered an accessory use and not a special use;
- xiii. Solid waste landfill operations provided the specific conditions herein set forth in relation to such special use are met;
- xiv. Radio, microwave, and television transmitters above 1,000 watts of output;
- xv. Removal of sod or removal or redistribution of top soil except as necessarily incident to normal farming operations or to the performance of work with respect to a building or structure under a permit issued pursuant to the Tribal Building Code.
- xvi. Group day-care homes in any district except Light Industrial, if the specific conditions and requirements provided by this Article for the use are met.
- xvii. Childcare centers in any district except Light Industrial, if the specific conditions and requirements provided by this Article for the use are met.
- xviii. Adult day-care home in any district except Light Industrial, if the specific conditions and requirements provided by this Article for the use are met.
- xix. Adult day-care centers in any district except Light Industrial, if the specific conditions and requirements provided by this Article for the use are met.
- c. Requirements for Hospitals. In addition to any and all requirements of the Indian Health Service for such facilities, the following shall be required in connection with any approval granted for a general or specialized hospital to provide care for human beings:
  - i. No building or buildings shall be erected or used for such purposes except on a parcel of ground containing a minimum of 10 acres;

- ii. The minimum size of any project must provide hospital beds for not less than 100 patients in the first phase of construction;
  - iii. Off-street parking shall be provided for at a ratio of at least three spaces for each hospital bed plus one space for the maximum number of employees who might be on the premises at any one time;
  - iv. No part of the hospital or of any building used for hospital purposes shall be closer than 100 feet to any adjacent lot.
- d. Requirements for Homes for the Elderly or Retired.
- i. No building or buildings shall be erected, converted or used for such purposes except on a lot or parcel of ground containing a minimum of 10 acres of land, and
  - ii. There is a minimum lot area for each tenant, elderly or retired person of 2,500 square feet, and
  - iii. There is provided one off-street parking space for each two tenants, elderly or retired persons, and
  - iv. No part of the building or buildings so used is closer than one hundred (100) feet to an adjacent lot line; except that the Zoning Administrator may reduce this setback requirement to not less than twenty-five (25) feet if he or she finds that such reduction in the setback will not be injurious to the use or enjoyment of nearby properties; will not result in traffic or other safety hazards; will not result in visual blight, distraction, or clutter; and will not materially impair the intent and purpose of this Regulation or the public's interest. In modifying such set back requirements, the Planning Department may attach conditions regarding the location, character, landscaping, or treatment of the buildings or premises or other such matters as are reasonably necessary to the furtherance of the intent and spirit of this Regulation and the public's interest.
  - v. There is provided for each tenant, elderly or retired person in the building or buildings so used a minimum floor area exclusive of basement or attic space of 400 square feet.
  - vi. A child care facility may be permitted as an accessory use to a home for the elderly or retired ("home"), subject to review and approval by Zoning Administrator as otherwise provided for special land uses by this Article, and subject to all of the following additional conditions and requirements:

1. The child care facility may receive infants, preschool and elementary-school age children for care (including, without limitation, supervision, training or educational instruction) for periods of less than 24 hours a day.
2. The child care facility shall provide care primarily to children of employees of the home while those employees are engaged in carrying out their employment with the home. The requirements of this paragraph shall be deemed satisfied so long as preference in admission to the facility shall be given to children of employees prior to the admission of any children of persons who are not employees of the home.
3. The principal functions of the child care facility shall be to provide opportunities for the interaction of, and to foster an inter-generational relationship between, the elderly residents of the home and the children attending the child care facility, and to provide child care for the children of employees of the home.
4. The child care facility shall be located on the same property as the home to which the facility is accessory.
5. The child care facility shall provide appropriate fencing, child drop-off and pick-up areas, and other facilities, design elements or operational characteristics for the safety of the children attending the facility, as determined necessary by the Planning Department.

e. Conditions of Approval.

- i. In granting a permit for any of these special land uses, the Zoning Administrator may require such land area, such parking, and such greenbelt or other landscaping as, in the opinion of the Zoning Administrator, is adequate to protect adjacent property from any undue adverse effect and, in addition, may impose such conditions upon its approval as are herein.

f. Applicability of other Requirements to Special Land Uses

- i. Except as otherwise provided by these Regulations, special land uses shall be subject to the requirements of these Regulations which are applicable in the district in which the special land use is located.
- ii. Procedure. The following procedures shall apply for special review of land uses:
  1. An application for a special land use authorized by this regulation may be filed by any person or governmental department having a legal interest in the property involved;

2. The application for a special land use shall be filed with the Zoning Administrator and shall include a site plan and such information as may be required to establish that the proposed use is an authorized special land use and that the requirements and conditions of this regulation in regard to such special land use are met.
3. At the initiative of the Planning Department, or upon the request of the applicant for special land use authorization or a property owner or the occupant of a structure located within 300 feet of the boundary of the property being considered for a special land use, a public hearing with notification as required for a notice of a request for special land use approval, as provided in herein, shall be held before a decision is made on the special land use request. If the applicant or the Planning Department requests a public hearing, only notification of the public hearing need be made. A decision on a special land use shall not be made unless notification of the request for special land use approval, or notification of a public hearing on a special land use request has been made as required by this Section.
4. Zoning Administrator may deny, approve, or approve with conditions, a request for special land use approval. The decision on a special land use shall be incorporated in a statement containing the conclusions relative to the special land use under consideration which specifies the basis for the decision, and any conditions imposed.

## **11. Signs and Signage.**

- a. **Description and Purpose.** This Article is intended to regulate the size, number, location and manner of display of signs within the LTBB Reservation in a manner consistent with the following purposes:
  - i. To protect and further the health, safety and welfare of the residents, property owners and visitors.
  - ii. To prevent traffic hazards and pedestrian accidents caused by signs which obstruct vision, distract or confuse drivers, or are improperly secured or constructed.
  - iii. To conserve and enhance community character.
  - iv. To protect property values.
  - v. To promote uniformity in the size, number or placement of signs within districts.

- vi. To promote the economic viability of commercial areas by minimizing visual clutter and allowing for proper placement of signs to safely direct motorists to their destination.
- vii. To balance the public's right to be informed and its desire to avoid visual pollution and hazardous conditions with the desires of businesses and non-business uses to communicate by means of signs.
- viii. To maintain and enhance the Reservation's aesthetic environment in a manner that is consistent with the public health, safety and welfare.
- ix. Prohibit all signs not expressly permitted by this Article. No sign shall be erected, altered, placed, established, painted, created, or maintained within the Reservation except in compliance with the standards, procedures, and requirements of this Article.

The Standards in this Article are determined to be the minimum necessary to achieve the above stated purposes

**b. Application of this Article.**

- i. The Regulations contained in this Article shall apply to signs outside of the public right-of-way and on the property to which the standard or regulation refers, except when specifically stated otherwise. A sign may only be erected, established, painted, created or maintained in conformance with the standards, criteria, procedures, and other applicable requirements of this Article.
  - ii. Unless otherwise stated in this Article, all determinations, findings, and interpretations shall be made by the Zoning Administrator or other appropriate officials called upon or designated by the Zoning Administrator.
- c. Signs Prohibited.** All signs not expressly allowed under this Article (unless exempted from regulation under this Article) are prohibited. Further, the following types of signs are expressly prohibited:
- i. Balloons, balloon signs, strings of light bulbs, pennants, streamers, banners, or flags, except for those flags items of a non-commercial nature not used for the purpose of commercial advertisement or those used for short term commercial advertisement of less than 30 days.
  - ii. Portable signs, except as allowed by this Article.
  - iii. Any sign, including window signs, which have flashing, moving, oscillating or blinking lights (excluding time and temperature signs and barber pole signs, which are permitted).

- iv. Signs affixed to trees, rocks, shrubs, fences, utility poles or other similar features.
  - v. Signs that are insecurely fixed, unclear, in need of repair, or signs which imitate official traffic signals or traffic directional signs or devices.
  - vi. Signs, and sign structures, which advertise a business or service use that no longer occupies the premises, and have not occupied the premises for 12 consecutive months.
  - vii. Roof signs.
  - viii. Pole signs.
  - ix. Off-premises signs (except for non-commercial signs and community special event signs), unless approved as a Special Land Use and subject to the on-premise sign regulations herein.
- d. **Signs Not Needing A Permit.** The following signs shall not require a permit, but shall be subject to all other applicable regulations:
- i. Governmental signs.
  - ii. Memorial signs.
  - iii. Signs for essential services which are two (2) square feet or less.
  - iv. Nameplate signs. One (1) per address of two (2) square feet or less.
  - v. Non-commercial signs.
  - vi. Directional signs not exceeding 2 square feet. Directional signs shall not contain a commercial message. Such sign shall not exceed two (2) square feet in area or three (3) feet in height, and shall be set back at least five (5) feet from any lot line and edge of any driving lane.
  - vii. Construction signs of a temporary nature.
  - viii. Signs for residential yard sales and residential garage sales.
  - ix. Window signs. Window signs attached or applied to the surface of any exterior window will be limited to coverage of 10 percent of the total window space. The area of such signs shall not be deducted from the total area of signs allowed but the total of all window signs shall not exceed the total allowed sign area for the use.
  - x. Flags. Flag pole heights shall not exceed thirty (30) feet. The total number of flagpoles allowed per site shall be limited to three (3). Non-government flags are



deemed to be signs and shall be subject to the provisions of this Article except that no such flag shall exceed thirty-two (32) square feet per face. Governmental flags must be displayed in a dignified, non-commercial manner and shall be governed by the standard rules of national protocol.

- xi. Real Estate signs: Real estate signs shall be limited to one (1) sign per parcel, shall not exceed six (6) square feet in area for residential property or 32 square feet in area for non-residential property, shall be set a minimum of ten (10) feet from all lot lines unless otherwise unfeasible, and shall be removed within thirty (30) days after completion of the sale or lease of the property.
- xii. Community special event signs. Community special event signs are permitted in any zoning district, subject to the following restrictions: The display of the signs shall be limited to fourteen (14) days immediately preceding the special event which is being advertised. The signs shall have a maximum sign of thirty-two (32) square feet in area, and a maximum height above ground level of twelve (12) feet (unless it is an over the highway banner) and shall be set back from any side or rear property line a minimum of eighteen (18) feet. The front setback shall be as required for signs in the zoning district in which the sign is to be located. Signs shall be removed within forty-eight (48) hours of the conclusion of the special event which is being advertised.

**e. Sign Permits and Application.**

- i. Permits Required. No sign requiring a permit as provided by this Article shall be erected, used, constructed or altered until a permit has first been obtained under this Section. A sign permit shall not be issued for a sign unless the sign fully complies with the requirements of this Article. The property owner shall at all times maintain in force a valid sign permit for any sign requiring a permit.
- ii. Application. Application for a sign permit shall be made to the Tribal Zoning Administrator, along with a fee in the amount established by resolution of the Tribe Council. The permit application shall be reviewed in accordance with the following procedures:
  - 1. Sign Plan. An application for construction, creation, or installation of a new sign or for alteration of an existing sign shall be accompanied by detailed drawings and accompanying narrative statements to show and describe the dimensions, design, structure, and location of each particular sign. A single application and permit may include multiple signs on the same lot.
  - 2. Completeness. After receiving an application for a sign permit, the Tribe shall review it for completeness. If the Tribe determines that it is

complete, the application shall then be processed. If the application is determined to be incomplete, the Tribe shall send to the applicant a written notice specifying how the application is deficient.

3. **Issuance or Rejection.** After the submission of a complete application for a sign permit, the Tribe shall either: (1) issue the sign permit, if the sign that is the subject of the application conforms in every respect with the requirements of this Article; or (2) reject the sign permit if the sign that is the subject of the application fails in any way to conform with the requirements of this Article.
  4. **Electrical Signs.** All signs requiring electrical service shall be reviewed for compliance with the Tribe's electrical code. Approval of electrical signs shall be noted on or attached to the sign permit.
- f. **Design, Construction and Location Standards.** All signs shall at all times be properly maintained in good structural condition in compliance with the requirements of this Article and shall not be permitted to become unsightly through disrepair or as a result of the effects of the weather. Under no circumstances shall the design, construction, support, or location of a sign constitute in any way a hazard to the health, safety or welfare of the public or to adjacent property.
- i. **Illumination of Permanent and Temporary Signs.** Permanent and temporary signs shall be permitted to be illuminated in compliance with the following: Signs shall not include animated, flashing, moving or intermittent illumination excluding barber poles and except that the messages may change no more frequently than once per minute. Temporary signs shall not be internally illuminated. Any external illumination of these signs shall be permitted only in commercial and industrial zones.
  - ii. **Internally Illuminated Building Signs or Free-Standing Signs:** The sign shall be constructed with either an opaque background and translucent letters and symbols, or a translucent darker colored background with a lighter contrasting color for the letters and symbols, exception provided for a changeable copy sign with dark colored letters or symbols on a lighter contrasting translucent background may be internally illuminated if the internally illuminated area of the sign does not exceed twenty (20) square feet.
  - iii. **Effects Not Permitted with Illuminated Signs:** The display shall not, or shall not appear to, flash, undulate, pulse, or portray explosions, fireworks, flashes of light, or blinking or chasing lights. The display shall not appear to move toward or away from the viewer, expand or contract, bounce, rotate, spin, twist or otherwise portray movement or animation as it comes onto, is displayed on, or leaves the sign board.

- iv. **Brightness Levels of Electronic Signs:** Maximum brightness levels for electronic signs in commercial/industrial zones shall not exceed five thousand (5,000) nits when measured from the sign's face at its maximum brightness, during daylight hours and five hundred (500) nits when measured from the sign's face at its maximum brightness between dusk and dawn. (nit=A unit of illuminative brightness equal to one candle per square meter, measured perpendicular to the rays of the source.)
- v. Signs less than or equal to twelve (12) feet in height may be either internally or externally illuminated.
- vi. **External Illumination of Freestanding Signs:** Any external lighting of signs that have a height of between eight (8) feet and twelve (12) feet must be from the top of the sign and directed downward. The lighting of signs that have a height of eight (8) feet or less may be illuminated from the top of the sign or from the ground. **Externally Illuminated Building Signs:** Signs may only be illuminated from the top of the sign.
- vii. **Indirect and External Light Sources.** Indirect and external light sources must be shielded from the view of persons viewing the sign and be further shielded and directed so that the light shines only on the sign and that illumination beyond the sign face is minimized.
- viii. Freestanding signs accessory to a single-family dwelling, two-family, or townhome use in a Residential district shall not be illuminated.
- ix. Signs on a building or parcel in a residential district that has multi-family uses shall not be illuminated.
- x. For signs on permitted non-residential uses in residential districts the illumination may be from external sources or by internal illumination of the letters and logos only; internal illumination of the background portion of the sign is prohibited.
- xi. If a registered trademark or logo is not in compliance with the illumination requirements of this Section, then such area of non-compliance shall be limited to a maximum of thirty (30 ) percent of the sign area.
- xii. Signs shall not be placed in, upon or over any public right-of-way, alley, or other place, except as may be otherwise permitted by the LTBB Tribal Council, Emmet County Road Commission or Michigan Department of Transportation as applicable. Any sign installed or placed in the public right-of-way or otherwise on public property, except in compliance with the provisions of this Article, shall be forfeited to the public and subject to confiscation and may be immediately removed by the Tribe. In addition to other available remedies, the Tribe shall have the right to recover from

the owner or person placing an unauthorized sign the full costs of removal and disposal of the sign.

- xiii. A sign shall not be erected in any place where it may, by reason of its position, shape, color, or other characteristics, interfere with, obstruct the view of, or be confused with any authorized traffic sign, signal, or device, or constitute a nuisance.
- xiv. Except as otherwise expressly allowed by this Article, all signs shall be constructed of permanent materials and shall be permanently attached to the ground, a building, or another structure by direct attachment to a rigid wall, frame, or structure. The sign support and construction for all signs requiring permanent attachment shall be able to withstand a minimum of 30 pounds of horizontal pressure per square foot of the area of the sign.
- xv. A sign and its supporting mechanism shall not extend beyond any lot lines of the property on which it is located.
- xvi. Off premise signs are permissible in commercial and PUD zones with the approval of the Building Official, and shall be subject to the regulations relevant to the parent parcel or use.

g. **Sign Regulations Applicable to All Districts.** The following regulations are applicable to signs in all districts:

- i. All signs shall be stationary and, except for non-commercial signs and community special event signs, shall pertain only to the business or activity conducted on the premises (i.e., shall be on-premises signs except where otherwise regulated herein).
- ii. Supplemental Standards for Freestanding Signs. Lots (parcels) with less than 300 lineal feet of frontage may have only one (1) freestanding sign per frontage. Lots with 300 or more lineal feet of frontage may have two (2) freestanding signs per frontage. For parcels which have frontage on more than 1 street, 1 additional free standing sign per street frontage may be allowed subject to the following: The permitted additional sign(s) shall not be placed along the same frontage which contains another freestanding sign and a minimum of forty (40) feet of road frontage is required for the placement of an additional sign(s). No more than two (2) freestanding signs are allowed along any one frontage.
- iii. Additional Building Signs for Multiple Story Buildings: One (1) additional sign is permitted on each of the building's primary and secondary frontages according to the following. For a building with two floors the additional permitted sign area is forty (40) square feet for an eligible building wall. This additional sign area may be

increased by ten (10) square feet for each additional floor of the building provided that the sign is placed at the floor height for which the bonus is given.

- iv. Projecting Signs: Projecting signs shall be limited to occupants that have a minimum of ten (10) feet of occupant building frontage provided that all projecting signs shall have a maximum height of fourteen (14) feet and a minimum clearance of eight (8) feet from the ground to the bottom of the sign. A projecting sign may be a minimum of six (6) feet from the ground when it is located above a landscaped area or other area that does not permit pedestrian traffic beneath the sign and projecting signs shall be placed on the building so that the signs are intended to be viewed by the pedestrians on the abutting street or pedestrian way.
- v. Changeable Copy Sign. Changeable message sign shall be permanently affixed to, and be parallel with the wall of the main building or designed into the freestanding sign as an integral part of the freestanding sign structure. Such changeable message signs shall have no moving parts. The background shall be uniformly dark, with light lettering of all one color. Freestanding signs may have up to thirty percent (30%) of the permitted sign area devoted to changeable copy. The changeable copy shall not change more than one time per five (5) second period. Changeable copy may be changed electronically, mechanically, or manually. Electronic changeable message signs may not be illuminated between the hours of 10:00 p.m. and 6:00 A.M. except that if the premises are open for business after 10:00 P.M., the lighting shall be turned off at the close of business.
- vi. All signs located on LTBB land shall be erected, altered, and maintained at the risk of the owner of the sign, who shall assume full responsibility for consequences of any damage caused by the sign.
- vii. A sign shall be removed by the owner within twenty-four (24) hours of receipt of notice from the Tribe stating that the sign is unsafe or not properly maintained or otherwise does not comply with the requirements of this Article by reason of its size, height, design, condition or location. The notice shall state that if the owner does not remove the sign, or correct the unsafe or improper condition, within that time period, the sign may be removed by the Tribe. Upon failure to remove or correct the unsafe or improper condition within 24 hours of receipt of notice, the Tribe may take whatever action is necessary to have the sign removed or to otherwise abate the unsafe or improper condition, and in addition to other available remedies, the Tribe shall have the right to recover from the owner of the sign the full costs of removing and disposing of the sign or abating the unsafe or improper condition.
- viii. Temporary construction signs are permitted within any District, subject to the following restrictions: Temporary construction signs shall be no larger than 32 square

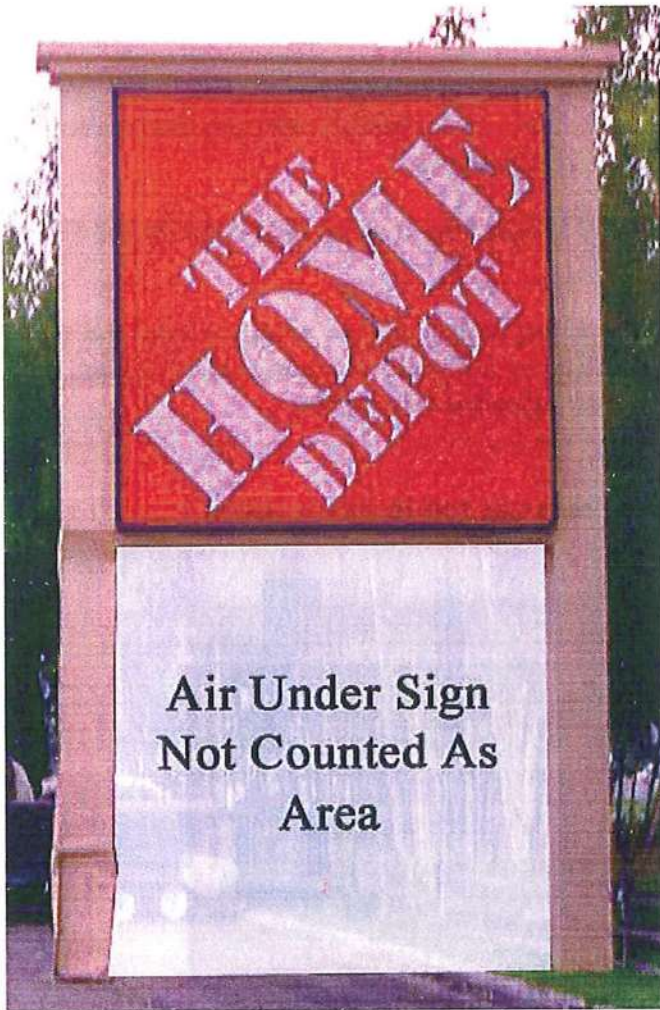
feet and shall be located not closer than 10 feet from the street right-of-way and shall not be higher than 10 feet. Any such temporary construction sign shall be removed not later than the placement of a permanent subdivision sign, or sign advertising the principal use, if any; provided however, that the temporary construction sign shall be removed when construction of buildings has taken place for at least 75% of the lots or units in the development.

- ix. Community special event signs are permitted in any zoning district, subject to the following restrictions: A community special event sign may be located either on or off the lot on which the special event is held. The display of the signs shall be limited to the 10 14 days immediately preceding the special event which is being advertised. The signs shall have a maximum size of 32 square feet in area, and a maximum height above ground level of 6 feet (unless it is an over the highway banner) and shall be set back from any side or rear property line a minimum of 18 feet. The front setback shall be as required for signs in the zoning district in which the sign is to be located. The signs shall be removed within 48 hours of the conclusion of the special event which is being advertised.
- x. Directional signs are permitted in any zoning district subject to the following restrictions: A directional sign shall not contain a commercial message. Such sign shall not exceed 2 square feet in area or 3 feet in height, and shall be set back at least 5 feet from any lot line and edge of any driving lane.
- xi. Non-commercial signs are permitted in all zoning districts.

**h. Measurement of Signs.**

- i. The area of a sign shall be measured as the area within a sign, continuous perimeter composed of any straight line geometric figure which encloses the extreme limits of writing, representation, emblem, logo, or any other figure of similar character, together with any frame or other material or color forming an integral part of the display or used to differentiate the sign from the background against which it is placed, excluding only the pedestal, poles or other structure necessary to support the sign.
- ii. The area of all signs shall be measured by adding the total area of all visible faces, notwithstanding the number of faces on each sign, or the relationship of each face to another for each sign.
- iii. For a sign comprised of individual letters, figures or elements on a wall or similar surface of a building or structure, or an irregular shaped freestanding sign, the area of the sign shall be the area of not more than three (3) geometric shapes that encompasses the perimeter of all the elements in the display.

- iv. When separate elements are organized to form a single sign, but the elements are separated by open space, the area of the sign shall include all the display areas, including the space between the elements.
- v. Up to five (5) percent of the permitted sign area may be considered minor protrusions, and extend outside of the maximum limitation of three (3) geometric shapes and are, therefore, exempted from being included as part of the sign area.
- vi. For freestanding and projecting signs the sign area shall be computed by the measurement of one (1) of the faces when two (2) display faces are joined, are parallel, or are within thirty (30) degrees of being parallel to each other and are part of the same sign structure. For any sign that has two display surfaces that do not comply with the above regulation, or has more than two display surfaces then each surface shall be included when determining the area of the sign.
- vii. In determining the area of freestanding signs, the following shall be exempted from being considered as part of the maximum permitted area:



- viii. One half square foot of a sign area shall be exempted for each digit of the street number, up to a maximum of three (3) square feet.
- ix. The portion of a solid sign base or other support, up to a maximum height of four (4) feet that is at least fifty (50) percent screened by landscaping at the time of installation.
- x. The air space under a freestanding sign between support posts, other air space between a projecting sign and the wall to which it is attached, additional base area, framing or structural supports or other portions of the sign when such areas are determined to be constructed and designed with materials which are similar to, or compatible with, the architecture of the building or other site features, not intended or designed to include messages, and exclusive of colors, trademarks, or any other decorative Design features that are primarily intended to attract attention, rather than be unobtrusive or compatible with the architecture of the building or other site features.



- xi. All other exemptions to the area of a sign may only be approved by the Zoning Administrator.
- xii. The height of a sign shall be measured as the vertical distance from the highest point of the sign to the finished grade of the ground immediately beneath the sign excluding any artificially constructed earthen berms.



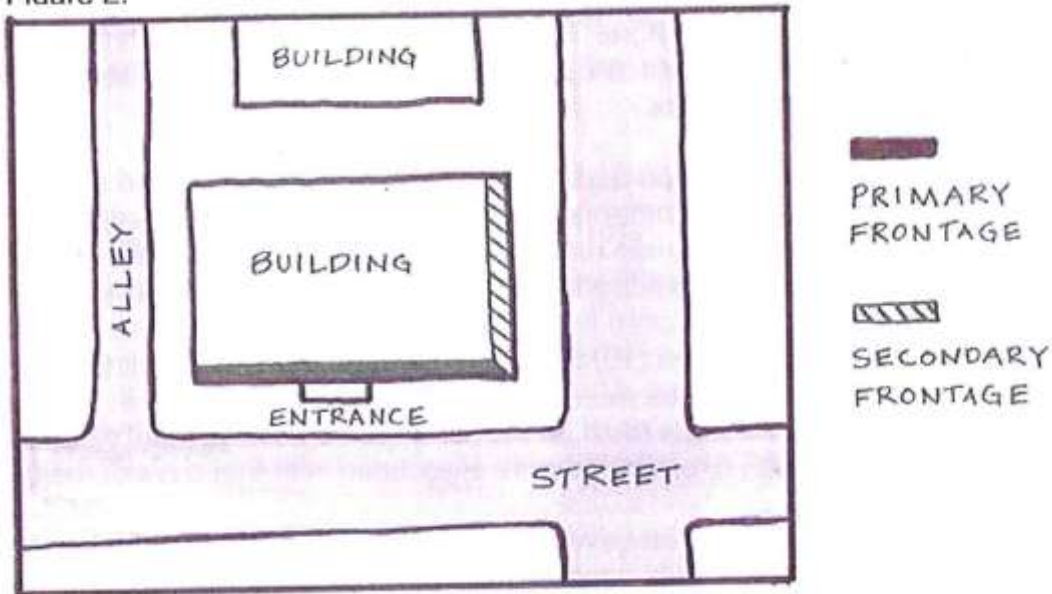
**i. Determining Building Frontage and Building Units.**

For purposes of this Article and for determining allowable wall sign area, the building frontage shall include the building walls that: face a public street, face a parking lot which serves the use, or that contains a public entrance to the uses therein. For the purposes of these regulations, a public alley is not considered a public street.

- i. The building frontage shall be measured along such building wall between the exterior faces of the exterior sidewalls.
- ii. In the case of an irregular wall surface, a single straight line approximating such wall surface shall be used to measure the wall's length.

- iii. For multi-occupant buildings, the portion of a building that is owned or leased by a single occupant shall be considered a building unit. The building frontage for a building unit shall be measured from the centerline of the party walls defining the building unit.

Figure 2:



- iv. The Primary frontage shall be the portion of a frontage that serves as the main access point to a building or building unit. (See figure 2)
- v. The secondary frontage shall be all other frontages. (See Figure 2)
- vi. Determining Public Street Frontage. For the purpose of this Article and for determining allowable freestanding sign area, public street frontage is the length of the public street, which is contiguous to the adjacent private parcel for which the sign is being considered. For the purposes of these regulations a public alley is not considered a public street. For the purposes of this Article standards, which are based on a minimum length of the public street frontage, shall also apply to "any portion thereof" unless the specific section states otherwise.
- vii. Determining Sign Setbacks. The required setbacks for the sign shall apply to all elements of the sign including its frame and base.
- j. **Permitted Signs.** The following signs are permitted and shall require an approved permit prior to construction:

- i. All Residential Districts. Wall and Freestanding Signs. Either one (1) wall mounted sign or one freestanding sign per parcel. Wall signs shall not exceed two (2) square feet. Freestanding signs shall not exceed six (6) square feet nor four (4) feet in height and shall be set back a minimum of ten (10) feet from all lot lines.
- ii. Residential Subdivision Signs. One sign identifying a platted subdivision, site condominium or other residential development (the "development") is allowed at each entrance road to the development, except that not more than two (2) such identification signs shall be allowed per development. The sign shall not exceed twenty-four (24) square feet in area and shall be located at least ten (10) feet from the street right-of-way line. The top of any sign shall not be more than five (5) feet above grade if freestanding. All signs must be included on the development's site plan and comply with the requirements associated with that development.
- iii. Residential Subdivision Layout Signs. One sign displaying the lots of the platted subdivision, site condominium or other residential development (the "development") is allowed at each entrance road to the development. Any such sign shall be removed when at least seventy-five percent (75%) of the lots or units in the development have been sold or when seventy-five percent (75%) of the buildings have been constructed. All signs must be included on the development's site plan and comply with the requirements associated with that development.
- iv. Highway Commercial District (HCD) - Wall Signs. Wall signs mounted on and parallel with the wall of the main building shall not exceed a total area of fifteen percent (15%) of the surface area of the mounting wall and computed on the ground level story only. For the purpose of measuring in these Regulations, the ground level story height may not exceed twelve feet. A second wall mounted sign may be permitted on buildings located on a corner lot with frontage on a County Primary or State Trunk line, provided the same calculation is used to determine the area of the sign. The second wall mounted sign may be in addition to the other permitted signs.
- v. HCD - Freestanding Signs. Freestanding signs shall not exceed a height of twelve (12) feet measured from the average grade at the base of the sign to the top of the sign. The total sign area of all freestanding signs shall not exceed an area of forty-eight (48) square feet, and no such sign shall be longer than four times its width.
- vi. HCD - Size. The total square footage of signs permitted by this Section shall not exceed 180 square feet in aggregate parcel and no single sign shall exceed 120 square feet, nor more than four times its height in width.
- vii. HCD - Vehicle Service Station and Gasoline/Convenience Store Signs. Establishments which provide repair services and/or gasoline for vehicles either as a principal or accessory use may display directional signs over individual doors or

bays. The size of the signs shall not exceed three (3) square feet. Customary lettering, insignias or symbols which are a permanent or structural part of the gasoline pump are allowed.

- viii. HCD - Non-residential Uses. Real estate signs in Highway Commercial, PUD, and Central Business Districts shall be limited to one (1) sign per parcel, shall not exceed thirty-two (32) square feet in area, nor exceed ten (10) feet in height and shall be set back a minimum of ten (10) feet from all lot lines unless otherwise feasible.
- ix. Central Business Districts (CBD). Signs may be permitted at the rate of two (2) per business or industrial premises, except that at least one sign shall be affixed to or be within two (2) feet of and be parallel with the wall of the main building. One (1) sign may be a freestanding sign.
- x. CBD - Wall/Building Sign. Signs mounted on and parallel with the wall of the main building shall not exceed a total area of fifteen percent (15%) of the surface area of the mounting wall and computed on the ground level story only. For the purpose of measuring in these regulations, the ground level story height may not exceed twelve (12) feet. A second wall mounted sign may be permitted on buildings located on a corner lot with frontage on a County Primary or State Trunk line, provided the same calculation is used to determine the area of the sign. The second wall mounted sign may be in addition to the other permitted signs.
- xi. CBD - Freestanding Sign. Freestanding signs shall not exceed a height of twelve (12) feet measured from the average grade at the base of the sign to the top of the sign. The total sign area of all freestanding signs shall not exceed an area of forty-eight (48) square feet, and no such sign shall be longer than four times its width. Signs shall be setback a minimum of ten (10) feet measured from all lot lines. Signs located in a road right-of-way shall not exceed an area of thirty-two (32) square feet or a height of eight (8) feet. Signs in a right-of-way are subject to any further rules, provisions, or prohibitions as determined by the governmental unit or agency having jurisdiction.
- xii. CBD - Real Estate Signs Non-Residential Uses. Real Estate signs in Highway Commercial, PUD and Central Business Districts shall be limited to one (1) sign per parcel, shall not exceed thirty-two (32) square feet in area, nor exceed ten (10) feet in height and shall be set back a minimum of ten (10) feet from all lot lines unless otherwise feasible.
- k. **Modification of Requirements for Signs in All PUD Districts and Those Requiring Special Land Uses.**
  - i. Except as provided in herein, all signs approved in connection with a special land use or a Planned Unit Development (PUD) shall meet the requirements of this Article for

signs as applicable to the zoning district in which the special land use or PUD is located.

- ii. In cases where extenuating or extraordinary circumstances create practical difficulties in complying with the requirements of this Article and where a modification of the requirements may still result in achieving the objectives of the zoning district in which the sign is to be located, the size, placement, number and height requirements for signs may be modified as provided by this Section. If the sign is part of a PUD in any PUD district, the Zoning Administrator may recommend to the Tribal Chairman and to the Tribal Council who may, in its discretion, modify the size, placement, number and height requirements for signs in the PUD. If the sign is part of a Special Land Use request, the Zoning Administrator alone may, at his/her discretion, modify the size, placement, number and height requirements for any signs proposed. In determining whether to approve a proposed modification, the Zoning Administrator and the Tribal Council must each find, based upon the facts presented by the applicant, that the following criteria have been met:
  - The modification of requirements is justified due to the nature, size, density, location or design of the proposed PUD, or Special Land Use, including the design or placement of proposed signs;
  - The modification of requirements will not result in traffic or other safety hazards, will not be injurious to the use or enjoyment of nearby property, will not result in visual blight, distraction, or clutter, and will not otherwise result in a detriment to the public health, safety or general welfare; and
  - The modification will still achieve the intended purpose of the PUD district or the zoning district if it is a Special Land Use, in which the sign is to be located.

- iii. Non-Residential Uses. Real estate signs in Highway Commercial, PUD and Central Business Districts shall be limited to one (1) sign per parcel, shall not exceed thirty-two (32) square feet in area, nor exceed ten (10) feet in height and shall be set back a minimum of ten (10) feet from all lot lines unless otherwise feasible.

1. **Nonconforming Signs, and Signs Accessory to Nonconforming Uses.**

- i. Continuance. Notwithstanding any other provision of this Article to the contrary, a permanent sign which was erected legally and which lawfully exists at the time of the enactment of this Article, but which does not conform to the height, size, area or location requirements of this Article, is deemed to be nonconforming and may continue to be used subsequent to that time, as provided by this subsection.

- ii. **Alternation/Repair.** Nonconforming signs may not be altered, expanded, enlarged, extended, or repaired, without being brought into full compliance with all applicable regulations under this Article, except as expressly provided by this subsection.
- A nonconforming sign may be diminished in size or dimension without jeopardizing the privilege of nonconforming use. As with conforming signs, a change solely in the wording of the copy of a nonconforming sign shall not constitute an alteration for purposes of this Article, unless the result of the change would cause the sign to be reclassified to a type of sign subject to different or more restrictive regulation.
- Routine repair to maintain a nonconforming sign in a safe and aesthetic condition exactly as it existed at the time of enactment of this Article and so as to continue the useful life of the sign shall not constitute an alteration for the purposes of this Article, unless the estimated cost of repair exceeds 50% of that appraised replacement cost, the right to continue using the nonconforming sign shall thereupon terminate and the sign shall be brought into full compliance with all applicable provisions and requirements of this Article prior to further use.
- In no event shall the alteration of a nonconforming sign result in an increase in the nature or degree of any aspect of the sign's nonconformity.
  - iii. **Signs Accessory to Nonconforming Uses.** A sign related to a nonconforming use may be erected on Tribal property in accordance with the sign regulations for the zoning district in which the property is located.
  - iv. **Damage or Destruction.** If a nonconforming sign is damaged or destroyed by fire, explosion, flood, wind or other calamity, the sign may be restored to the condition exactly as it existed immediately prior to the damage or destruction, unless the estimated cost of restoration or replacement exceeds fifty percent (50%) of the appraised replacement cost of the entire sign prior to the loss, as determined by the Zoning Administrator. If the estimated cost of restoration or replacement exceeds fifty percent (50%) of that appraised replacement cost, the right to continue using the nonconforming sign shall thereupon terminate and the sign shall be brought into full compliance with all applicable provisions and requirements of this Article prior to further use.
  - m. **Abandoned Signs.** Any sign which the Tribe determines to be abandoned shall be removed by the owner. If the owner does not remove the sign, or if no owner can be found, the Tribe may remove the sign. If the sign is removed by the Tribe and the owner is known, the Tribe shall have to right to recover from the owner of the sign the full costs of removing and disposing of the sign.

- n. **Violations.** It is a violation of this Article to install, create, erect or maintain any sign that does not fully comply with the requirements of this Article, including, but not limited to, any of the following:
- To install, create, erect, or maintain any sign in a way that is inconsistent with any plan or permit governing the sign or the lot on which the sign is located;
  - To install, create, erect, or maintain any sign requiring a permit without a permit;
  - To fail to remove any sign that is installed, created, erected, or maintained in violation of this Article; or
  - To continue any violation of this Article.

Each sign installed, created, erected, or maintained in violation of this Article is considered a separate violation when applying the penalty for portions of these regulations.

**12. Off Street Parking.** There shall be provided in all districts at the time of erection or enlargement of any main building or structure, automobile off-street parking space with adequate access to all spaces.

- a. Off-street parking for other than residential uses shall be either on the same lot or within four hundred (400) feet of the building it is intended to serve, measured from the nearest point of the building to the nearest point of the off-street parking lot.
- b. Any area once designated as required off-street parking shall not be changed to any other use unless and until equal facilities are provided elsewhere.
- c. In the instance of dual function of off-street parking spaces where operating hours of uses do not overlap, the Board of Appeals may grant an exception by reducing the total number of spaces required.
- d. The storage of merchandise, motor vehicles for sale, trucks or the repair of vehicles is prohibited on required off-street parking lots.
- e. Residential off-street parking spaces shall consist of a driveway parking strip, parking bay, garage, carport or combination thereof. Off street parking may be occupied at any time by a single automobile for sale or under repair by the occupant.
- f. For those uses not specifically mentioned, the requirements for off-street parking facilities shall be in accord with a use which the Board of Appeals considers as being similar in type.
- g. Recreation vehicles such as travel trailers and campers are not permitted to be parked, located or stored in a required front yard.

- h. In all residential districts, no parking shall be permitted in the required front yard area. In all districts other than residential, parking may be permitted in the front yard, provided there is at least a 10-foot buffer area between the road right-of-way and the off-street parking lot.
- i. The minimum number of off-street parking spaces by use shall be in accordance with the following schedule, except as noted in e. above:



**TABLE 2**  
**MINIMUM PARKING SPACES**

LAND USE REQUIRED PER UNIT OF MEASURE

<b>A. Residential</b>	
1. Dwelling	2 per dwelling
2. Elderly Housing	1 per two units
3. Rooming House	1 per two occupants of maximum capacity
4. Mobile Home Park	2 per unit
<b>B. Institutional</b>	
1. Church	1 per 3 seats or each 6 feet of pew
2. Hospital	1 per bed
3. Nursing Home	1 per two beds
4. Nursery, Elementary or Junior High School, Government Center	1 per employee plus 1 per seat in designated common areas
5. Senior High School	1 per employee plus 1 per 10 students
6. Sports Arena or Stadium	1 per three seats or 1 per 6 feet of bench
<b>C. Commercial</b>	
1. Planned Shopping Center/PUD	1 per 100 sq. ft. of floor area
2. Barber and Beauty Shop	1 per employee plus 1 per service chair
3. Banks	1 per 100 sq. ft. of floor area
4. Doctor or Dentist	1 per 100 sq. ft. of waiting office room plus 1 per service chair
5. Business Office	1 per 200 sq. ft.
6. Taverns	1 per 50 sq. ft. of floor area
7. Restaurants	1 per 3 persons of seating capacity plus auto stalls if drive-in type
8. Furniture, Appliances, Plumber, Electricians, Minor Repair Service	1 per 800 sq. ft. of floor area
9. Gasoline Station	2 per service station stall plus 1 per employee
10. Laundromat	1 per 3 washing machines
11. Hotel or Motel	1 per unit plus 1 per employee
12. Vehicle Sales	1 per 200 sq. ft. of show room floor area
13. Retail Groceries	1 per 100 sq. ft. of floor area
14. Other Retail Stores	1 per 150 sq. ft. of floor area
<b>D. Industrial</b>	
1. Industrial Office or Research	1 ½ spaces per employee
2. Assembly Plants	1 per employee

- j. Additional Parking Requirements. The number of parking spaces required under the above provisions shall be determined at the time a building permit is applied for based upon the plans and specifications and reasonable anticipated needs as of that time. If because of an increase in the number of employees, or other changes within a building, the number of spaces that would be required by this Regulation is increased more than 40 percent of the previously required number, the owner of the premises must provide the additional parking or reduce the number of users of the premises to conform with the parking available so as not to create congestion on public streets.
- k. All off street or on street parking spaces shall be a minimum of 10' in width and 20' in length.
- l. Paving. All off-street parking areas shall be paved with at least two inches of asphalt or four inches of concrete.
- m. Storage. No off-street parking lots shall be used for the storage of wrecks, junk cars or junk motor vehicles or any other type. Nor shall such premises be used for repairs services or sales of vehicles.
- n. Outside storage of recreational vehicles. No recreational vehicle shall be stored outside at any place on public property, or parked outside on public property for more than 24 hours.
- o. One recreational vehicle, less than ten feet in height and less than 30 feet in length may be stored on the driveway no closer than 20 feet from the public street, however, no storage is permitted in the rest of the front yard area.
- p. A recreational vehicle may be stored in the side yard, provided that it shall:
  - i. Be stored parallel to and adjacent to the structure;
  - ii. Not exceed the dimension of the structure plus six feet or a maximum of 35 feet, whichever is less;
  - iii. Be provided with either an evergreen screening or a solid fence eight feet high, planted or installed between the vehicle and the property line. Plantings shall be planted a minimum of four feet high and be allowed to grow and be maintained a minimum of eight feet high; and
  - iv. Be set back a minimum of four feet from the property line.
- q. A recreational vehicle may be stored in the rear yard, provided that it shall:
  - i. Be stored parallel to and adjacent to the structure;

- ii. Not exceed the dimension of the structure plus six feet or a maximum of 35 feet, whichever is less;
- iii. Be provided with either an evergreen screening or a solid fence eight feet high, planted or installed between the vehicle and the property line. Plantings shall be planted a minimum of four feet high and be allowed to grow and be maintained a minimum of eight feet high; and
- iv. Meet the applicable setbacks.
- r. A maximum of two recreational vehicles may be stored outside of a building on any lot containing a dwelling unit. Only one such vehicle may be equal to or greater than ten feet in height or 30 feet in length. Such vehicles must be owned or leased by the property owner or the property tenant, except that on lots of five acres or larger, the option shall exist that both of the two allowed recreational vehicles may be equal to or greater than ten feet in height or 30 feet in length. Additionally, on such lots, one such vehicle may be owned or leased by someone other than the property owner. Recreational vehicles stored on such lots shall be stored in the rear yard area within the applicable setbacks.
- s. A recreational vehicle may be stored unlicensed, in accordance with the above, for a period of time not to exceed six months.
- t. No camper/rv, camper trailer or boat shall be used for residential purposes, except that visitors with such vehicles may sleep in them for a period not to exceed nine days.
- u. All Recreational vehicles must be maintained in a clean, well-kept state. In addition, recreational vehicles equipped with liquefied petroleum gas containers must ensure that such containers must meet the current standards of the Interstate Commerce Commission, the United States Department of Transportation or the American Society of Mechanical Engineers. Any valves must be closed at all times that the vehicle is not in preparation for immediate use. Leaks in containers must be repaired immediately.

### **13. Administration and Violations, Enforcement and Penalties**

- a. Zoning Administrator. The Zoning Administrator shall administer this regulation as provided for herein.
- b. Duties: The Zoning Administrator and such deputies or assistants as have been, or shall be, duly appointed shall enforce the Zoning Regulations and in addition thereto, and in furtherance of such authority, shall:
  - i. Register all nonconforming uses when they are identified.
  - ii. Conduct inspections of buildings, structures and uses of land to determine compliance with the provisions of this Regulation.

- iii. Issue violation notices that require compliance within ten (10) days, and advise suspected violators of right of appeal.
  - iv. Require that all construction or work of any type be stopped when such work is not in compliance with this Regulation.
  - v. Forward, to the Planning Department, applications for amendments to the Zoning Regulation text or map and special uses.
  - vi. Forward, to the Zoning Board of Appeals, applications for appeals and variances.
  - vii. Forward, to the Tribal Administrator , applications for temporary buildings, and structures.
  - viii. Forward applications to Tribal Council for uses of land.
  - ix. Review all cases of encroachment into required yards including trees and shrubs from adjacent property owners.
  - x. Interpret the Zoning Regulations when questions arise, subject to review by the Planning Department.
  - xi. Determine which uses, though not contained by name in a zoning district list of permitted uses, are of the same general character and permit their establishment.
  - xii. Initiate an examination of the administrative record of variances and appeals and make a report to Tribal Council not less frequently than once a year.
- c. Zoning Permit
- i. Before proceeding with the erection, alteration, repair, moving, or removing of any building or part thereof, an owner or his authorized agent shall obtain a permit from the Zoning Administrator. The applicant for a permit must file with his request a set of plans and written specifications sufficient to clearly and fully indicate the nature of the contemplative work and the kind and quality materials to be used therein, together with an estimated cost. Drawings shall clearly indicate the size of structural members, walls and openings, the position of the building on the site with reference to property and street lines and adjacent buildings, and such other information as may be necessary to provide for the enforcement of these regulations. It shall be the duty of all lot owners and lessees to have accurately located all corners and boundaries of their property prior to building thereon.
  - ii. A record of such applications and plans shall be kept in the office of the Zoning Administrator for such period of time as the Tribe Council deems necessary.

- iii. When the plans submitted have been found to conform with the requirements of this Regulation, the Zoning Administrator shall issue a permit. The Zoning Administrator shall inform the applicant that this permit does not do away with the necessity for permits showing conformity with the Tribal Building Code, Sanitary Code, and other requirements of the Tribe, Federal Government, and any other municipality that has entered an agreement with the Tribe, and that no construction shall be commenced until these other legal requirements have been fully met.
  - iv. The Zoning Administrator shall inspect the building once during construction and shall make a final inspection of all buildings after completion, before occupancy begins, upon receiving notice from the owner, contractor or his/her agent that said building is ready for such final inspection.
  - v. Permits for structures on which work has not started within 12 months following the date of issue, and permits for structures upon which work has been abandoned for a period of 12 months, shall lapse and cease to be in effect.
  - vi. Appeals. A denial of a permit may be appealed from the ruling of the Zoning Administrator. An appellant shall file with the Building Inspector and with the Board of Appeals a notice of appeal specifying the grounds for the appeal. The Zoning Administrator shall forthwith send to the Board all the documents forming the record upon which the action appealed was taken.
- d. Certificate of Occupancy and Compliance. No vacant land shall be occupied or used, and no building hereafter erected or altered shall be occupied, used or changed in use until a Certificate of Occupancy and Compliance shall be issued by the Zoning Administrator, stating that the building or proposed use of the building and premises complies with the Tribal building and health laws and regulations. In addition, all other inspections must be complete and signed as completed. Certificates of Occupancy and Compliance shall be applied for with the application for a building permit and shall be used within ten (10) days after the construction or alteration of such building shall have been substantially completed.
- 14. Violation and Penalties.** The Zoning Administrator may issue citations for buildings erected, altered, razed, or converted, or uses carried on in violation of any provision of this Article, Tribal statutes, as amended.
- 15. Appeals.** An appeal of a citation may be taken to the Board of Appeals within such time as shall be prescribed by said Board of Appeals. An appellant shall file with the Building Inspector and with the Board of appeals a notice of appeal specifying the grounds for the appeal.
- 16. Judicial Review.** Any decision of the Board of Appeals may be appealed to Tribal Court.

- 17. Vested Right.** It is hereby expressly declared that nothing in these regulations shall be held or construed to give or grant to any person, firm or corporation any vested right, license, privilege or permit.
- 18. Conflicting Regulations.** Wherever in Tribal regulations or statutes there are two or more statements or regulations that have conflicting provisions, the regulation or statute with the more stringent requirements shall govern.
- 19. Interpretation.** In interpreting and applying the provisions of these regulations, they shall be deemed to be the minimum requirements adopted for the promotion of the public safety, health, convenience, comfort, prosperity, and general welfare. It is not intended by these regulations to interfere with or abrogate or annul any statute, rules, regulations or permits previously adopted or issued and not in conflict with any of the provisions of these regulations or the provisions of other statutes of the Tribe, or which have been adopted or which shall be adopted or issued pursuant to law relating to the use of buildings or premises. Nor is it intended by these regulations to interfere with or abrogate or annul any easements, covenants, or other agreements between parties, provided, however, that where these regulations impose a greater restriction upon the use of buildings or requires larger open spaces than are imposed or required by such other statute, rules, regulation, or permits, or by easement, covenants, or agreements, the provisions of these regulations shall control. Whenever it is necessary to have an interpretation of the meaning of these regulations, the Board of Appeals shall determine what was meant, if disputed subsequent to a determination by the Zoning Administrator.



# Waganakising Odawak

Little Traverse Bay Bands of Odawa Indians

## Office of Tribal Chairman

7500 Odawa Circle, Harbor Springs, Michigan 49740

Phone 231-242-1418 • Fax 231-242-1411

### SITE PLAN REVIEW REGULATIONS

REG-WOS-2009-007 xxxxxx-xxx

- I. Purpose of Regulations.** The intent of these regulations is to provide for consultation and cooperation between a developer and the Tribe via the LTBB Planning Department so that both parties might realize maximum utilization of land and minimum adverse effects upon the surrounding land uses consistent with the requirements and purposes of the LTBB Zoning Statute, WOS 2009-007. Through the application of the following provisions, the attainment of the Master Land Use Plan of the Little Traverse Bay Bands of Odawa Indians (LTBB) will be assured and the LTBB community will develop in an orderly fashion.
- II. Definitions:**
- A. **Cultural Resource:** means a site, use, object or land cover that is determined by means either formal or informal, to be of cultural value to the Little Traverse Bay Bands of Odawa Indians.
  - B. **Department:** means the LTBB Planning Department.
  - C. **Licensed or registered:** means licensed or registered with an appropriate Tribal, state, federal or local agency that has an agreement with the Tribe.
  - D. **Planned Unit Developments:** Both a type of building development as well as a regulatory process. A PUD is a designed grouping of varied and compatible land uses, such as housing, recreation, commercial centers, and industrial parks, all within one contained development or subdivision. It is achieved via a negotiated zoning district uniquely tailored for a specific property.
  - E. **Planning Director:** means the Director, Program Manager, or Supervisor of the Planning Department
  - F. **Site Plan:** means drawings that provide an overhead perspective on how buildings, parking areas, and other facilities would appear on a site. A site plan might also show service routes, landscaping, site zoning, sidewalks, expansion forecasts, neighboring streets, fences, electrical, gas and other utility lines and other buildings.
  - G. **Site Plan Review:** means the process by which the Planning Department reviews the contents of the Site Plan for conformance with regulations and accepted standards.

- H. **Special Land Uses:** A special use is a use of a parcel, which allows a specific exception to the zoning regulations from a list of acceptable exceptions for a particular parcel of land in a district of a particular zoning character. Special Land Uses may be permitted if applicable standards or conditions are met and after approval by the Tribe Zoning Administrator.
- I. **Zoning Administrator:** An individual appointed by the Tribal Administrator to administer these regulations.
- J. **Zoning Districts:** A geographic area that is subject to Tribal land use controls. The Tribe designates these areas and establishes controls over types of land uses, density, and lot requirements in each zone.

### **III. Regulations pertaining to Site Plan Review:**

- A. **Site Plan Review in Use Districts.** A site plan shall be submitted to the Department for approval of any use in the Medium Density Cluster Residential, Multifamily/Mixed Residential, Gaming/PUD, Forest/Recreational/Conservation, Agriculture, Highway Commercial, Central Business District, and Light Industrial zones and shall be required in the following situations:
  - 1. Any use or development for which the submission of a site plan is required by any provision of these regulations.
  - 2. Any development, except single-family platted residential, for which off-street parking areas are provided as required in these regulations.
  - 3. Any use in a multifamily or nonresidential district, lying contiguous to or across a street from a single-family residential district and/or use.
  - 4. Any use except single-family residential which lies contiguous to a major thoroughfare or collector street.
  - 5. All Special Land Uses (or conditional uses) in single-family districts such as, but not limited to, churches, schools, public facilities, and similar uses.
  - 6. All developments in wetlands or 100 year floodplains, including individual single family homes for which a permit is required by any LTBB Department.
  - 7. All other developments in which ownership interests in land are transferred for the purpose of development of a physical structure.
  - 8. All site condo and condominium subdivisions developed pursuant to applicable law.
- B. **Application for Site Plan Review.** An application for Site Plan Review shall be submitted to the Department. The detailed site plan presented for consideration shall contain all information required in these regulations.



1. Each submission for Site Plan Review shall be accompanied by application and site plan in triplicate. The application shall at a minimum, include the following information:
  - a. The applicant's name (in full), address, any contact number(s) including mobile and message phones, and an email address, if available.
  - b. Proof of property ownership, and whether there are any options on the property, or any liens against it.
  - c. A signed statement that the applicant is the owner of the property or officially acting on the owner's behalf.
  - d. The name and address of the owner(s) of record if the applicant is not the owner of record (or firm or corporation having a legal or equitable interest in the land), and the signature of the owner(s).
  - e. The address and or parcel number of the property.
  - f. Name and address of the developer (if different from the applicant).
  - g. Name and address of the engineer architect and/or land surveyor.
  - h. Project title.
  - i. Project description, including the total number of structures, units, bedrooms, offices, square feet, total and usable floor area, parking spaces, carports or garages, employees by shift, amount of recreation and open space, type of recreation facilities to be provided, and related information as pertinent or otherwise required by these regulations.
  - j. A vicinity map drawn at a scale of 1"=2000' with north point indicated.
  - k. The gross and net acreage of all parcels in the project.
  - l. Land uses, zoning classification and existing structures on the subject parcel and adjoining parcels.
  - m. Project completion schedule/development phases.
  - n. Written statements relative to project impacts on existing infrastructure (including traffic capacity of streets, schools, and existing utilities) and on the natural environment of the site and adjoining lands. If formal impact statements are required, they would be stated here, or referenced.
2. The site plan shall consist of an accurate, reproducible drawing at a scale of 1" = 100' or less, showing the site and all land within 150' of the site. If multiple sheets are used, each

shall be labeled with date and version number and the preparer identified. Each site plan shall depict the following:

- a. Location of proposed and/or existing property lines, dimensions, legal descriptions, setback lines and monument locations.
- b. Existing topographic elevations at two (2) foot intervals, proposed grades and direction of drainage flows.
- c. The location and type of existing soils on the site and any certifications of borings.
- d. Location and type of significant existing vegetation.
- e. Location and elevations of existing water courses and water bodies, including county drains and man-made surface drainage ways, floodplains, and wetlands.
- f. Location of existing and proposed buildings and intended uses thereof, as well as the length, width, and height of each building and typical elevation views of proposed structures.
- g. Proposed location of accessory structures, buildings and uses, including, but not limited to, all flagpoles, fences, light poles, bulkheads, docks, storage sheds, transformers, air conditioners, generators and similar equipment, and the method of screening where applicable.
- h. Location of existing public roads, rights-of-way and private easements of record and abutting streets.
- i. Location of and dimensions of proposed streets, drives, curb cuts, and access easements, as well as acceleration, deceleration and passing lanes (if any) serving the development. Details of entryway and sign locations should be separately depicted with an elevation view.
- j. Location, design, and dimensions of existing and/or proposed curbing, barrier free access, carports, parking areas (including indication of all spaces and method of surfacing), fire lanes, and all lighting thereof.
- k. Location, size, and characteristics of all loading and unloading areas.
- l. Location and design of all sidewalks, walkways, bicycle paths and areas for public use.
- m. Location of water supply lines and/or wells, including fire hydrants and shut off valves, and the location and design of storm sewers, retention or detention ponds,

waste water lines, clean-out locations, connection points and treatment systems, including septic systems if applicable.

- n. Location of all other utilities on the site including, but not limited to, natural gas, electric, cable TV, telephone, and steam.
- o. Proposed location, dimensions and details of common open spaces and common facilities such as, community buildings or swimming pools, if applicable.
- p. Location, size, and specifications of all signs and advertising features with cross-sections.
- q. Exterior lighting locations with area of illumination illustrated, as well as the type of fixtures and shielding to be used.
- r. Location and specifications for all fences, walls, and other screening features with cross-sections.
- s. Location and specifications for all proposed perimeter and internal landscaping and other buffering features. For each new landscape material the proposed size at the time of planting must be indicated. All vegetation to be retained on the site must also be indicated, as well as its typical size by general location or range of sizes, as appropriate.
- t. Location, size, and specifications for screening of all trash receptacles and other solid waste disposal facilities.
- u. Location and specifications for any existing or proposed above or below ground storage facilities for any chemicals, salts, flammable materials, or hazardous materials, as well as, any containment structures or clear zones required by government authorities.
- v. Identification of any significant site amenities, known cultural resources, or unique natural features.
- w. Identification of any significant views onto or from the site to or from adjoining areas.
- x. North arrow, scale, and date of original submission and last revision.
- y. Seal of the registered engineer, architect, landscape architect, surveyor, or planner who prepared the plan.

### **C. Site Plan Review and Approval Authorization.**

1. The Department as specified in this section, shall review and approve, review and approve with conditions, or review and deny all site plans submitted under these regulations. Each site plan shall comply with the “Standards for Granting a Site Plan Approval” as described in these regulations. Each action taken with reference to site plan review shall be duly recorded in the official record of action by the Department. The Zoning Administrator shall forward any site plan received to the Department for review. Those site plans which require review will then be submitted to the Department for action along with the recommendation as to conformity or nonconformity with these regulation requirements and what revisions or conditions, if any, would be necessary in order to be in conformance. Prior to any final decision, the Department may seek the recommendations of the LTBB Department of Natural Resources and Environmental Services, Housing Department, and any other Tribal Governmental staff that the Department deems appropriate. The Department may also seek consultation and recommendations from other governments, licensed architects, and/or licensed engineers.
2. All site plans shall be acted upon within sixty (60) days of receipt by the Department of a complete application and site plan meeting the requirements of these regulations. Following approval of a site plan, the petitioner shall apply for the appropriate LTBB, county, state or federal permits as may be required by said agencies and present appropriate plans and specifications as may be required by such agencies.

**D. Procedures For Submission and Review of Applications For Major Projects.**

1. Major Projects. All developments greater than twenty-five thousand (25,000) square feet of structure, or larger than five (5) acres in size, and all Planned Unit Developments are major projects, which require preliminary site plan review by the Department pursuant to the requirements below. All other projects are considered minor projects; subject to review and approval by the Department (see subsection K), or amendments to existing plans which are processed pursuant to the requirements of subsection L.
2. Submission Requirement. The applicant shall complete and submit the original and two (2) copies of an application for Site Plan Approval, three (3) copies of the site plans, and other information where applicable. The procedure for processing major project site plans includes three (3) phases: conceptual review via a Pre-application Conference, Preliminary Site Plan Review, and Final Site Plan Review.
3. Pre-application Conference. During this conceptual review phase, a generalized site plan is presented by a prospective applicant for consideration of the overall idea of the development. Basic questions of use, density, integration with existing development in the area and impacts on and the availability of public infrastructure are discussed. This conference is scheduled by a prospective applicant with the Department and such other LTBB representatives as appropriate, including at least one (1) member of the Planning

Department. At this meeting the applicant or his/her representative is also presented with the applicable procedures required by these regulations for approval of the proposed development and with any special problems or steps that might have to be followed, such as requests to the Zoning Board of Appeals for a variance. There is no charge or fee to the applicant for this meeting.

4. Preliminary Site Plan Review. The second phase is called Preliminary Site Plan Approval. At this step a preliminary site plan meeting the submission requirements of these regulations is reviewed by the Planning Department. If changes are necessary for final site plan approval, they are indicated in writing to the applicant.
5. Final Site Plan Review. The Department shall indicate in writing that all requirements of these regulations including those of other reviewing agencies have been met including any conditions that may be necessary. Where the applicant is dependent upon the grant of any variances by the Zoning Board of Appeals, said favorable action by the Zoning Board of Appeals is necessary before final site plan approval can be granted. An approved site plan shall include a note referencing the case number and date of all variances granted to be recorded as an official record by the department.

**E. Distribution of Required Copies and Action Alternatives.** Where Site Plan Review is required by these regulations an applicant for Site Plan Approval shall complete and submit copies of an Application for Site Plan Approval, site plans, and other information, where applicable.

1. The Application for Site Plan Approval must be obtained from the Planning Department. The applicant is asked to keep one (1) copy for his/her records. The applicant shall return the original and two (2) copies of the application to the Planning Department at least thirty (30) days prior to the next preliminary site plan review.
2. The Planning Department will consider all applications for site plan review submitted to it for approval, revision, or disapproval at a scheduled meeting:
  - a. Upon determination of the Planning Department that a site plan is in compliance with the Zoning Statute, WOS 2009-007, or as amended; and these regulations, it shall be so indicated on the site plan.
  - b. Upon determination of the Planning Department that a site plan is in compliance, except with minor revisions, said changes shall be so indicated. When these changes have been adequately provided, the petitioner shall resubmit the site plan to the Planning Department for Final Site Plan Approval.
  - c. If extensive revisions to the site plan are necessary to meet the Zoning Statute requirements and other applicable plans and regulations, the site plan shall be

disapproved, and the applicant is requested to prepare an alternate site plan. In this case, "DISAPPROVAL" shall be written on the plan and reasons for disapproval indicated on the plan.

3. Any site plans reviewed and approved by the Planning Department pursuant to subsection K and all final site plans shall have the same submission requirements and action alternatives as for preliminary site plans described in the above requirements with the following exceptions:
  - a. Three (3) copies of the final site plan and related information shall be submitted.
  - b. Three (3) copies will be distributed to other reviewing agencies as determined necessary by the Planning Department.
  - c. Final action shall be taken within thirty (30) days.
4. When a Final Site Plan is reviewed and approved or disapproved by the Planning Department, and all steps are completed, three (3) copies of the Final Approved Site Plan will be marked by the Planning Department for the following distribution:
  - a. One (1) copy returned to the applicant signed by the Director of the Planning Department including any conditions of approval.
  - b. Two (2) copy forwarded to the Department for filing.
5. Upon Final Site Plan Approval by the Planning Department a building permit may be obtained subject to review and approval of the plans by a licensed architect or engineer.
6. If the applicant fails to initiate construction of an approved site plan within six (6) months of approval the applicant shall be required to appear before the Planning Department and demonstrate why the approved Final Site Plan should not be revoked. After a hearing the Planning Department may revoke a previously approved site plan for property on which no physical development activity has occurred upon making written findings that one or more of the following circumstances exist:
  - a. An error in the original approval is discovered either because of inaccurate information supplied by the applicant or administrative error by a staff member or other agency; or
  - b. Zoning regulations applicable to the project have been changed and the previously approved site plan does not comply with them; or
  - c. A change in LTBB law affecting the previous approval has occurred; or

- d. Pollution, impairment or destruction of the environment or to another legally protected public interest would occur if the project were to be constructed as previously approved.
- 7. Revocation of an approved site plan shall be communicated in writing by certified mail to the property owner. The Building Inspector shall also be notified to withhold any building permit until a new site plan is approved.
- 8. Thirty (30) days prior to expiration of an approved site plan pursuant to these regulations, an applicant may make application for maximum of a six (6) month extension of the site plan at no fee. The applicant shall explain in writing to the Department why the development has not proceeded, what the current time frame is, and why an extension should be granted.
- 9. Any subsequent re-submission shall be processed as a new request with new fees, except for minor amendments pursuant to subsection G below.

**F. Standards for Granting Site Plan Approval.**

- 1. Each site plan shall conform to all applicable provisions of these regulations and the standards listed below, as applicable:
  - a. All elements of the site plan shall be harmoniously and efficiently organized in relation to topography, the size and type of the lot, the character of adjoining property, and the type and size of buildings. The site shall be so developed as not to impede the normal and orderly development or improvement of surrounding property for uses permitted in these regulations.
  - b. The landscape shall be preserved in its natural state, insofar as practical, by minimizing tree and soil removal, and by topographic modifications, which result in maximum harmony with adjacent areas, along with the maximum level of cultural resource preservation that is practical.
  - c. Special attention shall be given to proper site drainage so that removal of storm waters will not adversely affect neighboring properties.
  - d. The site plan shall provide reasonable visual and sound privacy for all dwelling units located therein. Fences, walks, barriers, and landscaping shall be used, as appropriate, for the protection and enhancement of property and for the privacy of its occupants.
  - e. All buildings or groups of buildings shall be so arranged as to permit emergency vehicle access by some practical means to all sides.

- f. Every structure or dwelling unit shall have access to a public street, walkway or other area dedicated to common use.
- g. There shall be provided a pedestrian circulation system, which is insulated as completely as reasonably possible from the vehicular circulation system.
- h. All loading and unloading areas and outside storage areas, including areas for the storage of trash, which face or are visible from residential districts or public thoroughfares, shall be screened, by a vertical screen consisting of appropriate materials no less than six (6) feet in height.
- i. Exterior lighting shall be arranged that it is deflected away from adjacent properties and so that it does not impede the vision of traffic along adjacent streets. For the purpose of consistency with existing development, outdoor lighting standards shall be those found in the Appendix B: Outdoor Lighting Standards, as adopted by reference herein, including geographical limitations.
- j. The arrangement of public or common ways for vehicular and pedestrian circulation shall respect the pattern of existing or planned streets and pedestrian or bicycle pathways in the area. Streets and drives which are part of an existing or planned street pattern which serves adjacent development shall be of a width appropriate to the traffic volume they will carry and shall have a dedicated right-of way equal to that specified in the LTBB Master Land Use Plan or as designated in the filed right of way legal description.
- k. All streets shall be developed in accordance with the applicable County Road Commission, Bureau of Indian Affairs, or LTBB specifications.
- l. Site plans shall conform to all applicable requirements of state and federal law and approval may be conditioned on the applicant receiving necessary state and federal permits before final site plan approval or an occupancy permit is granted.

#### **G. Conditional Approvals.**

- 1. The Planning Department may conditionally approve a site plan on conformance with the standards of another local, county, federal or state agency, such as but not limited to, a Water and Sewer Department, County Drain Commission, County Road Commission, State Highway Commission or Natural Resources Department. They may do so when such conditions:
  - a. Would ensure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity;



- b. Would protect the natural environment and conserve natural resources and energy;
  - c. Would ensure compatibility with adjacent uses of land; and
  - d. Would promote the use of land in a socially and economically desirable manner.
- H. **Conformity to Approved Site Plan Required.** Following Final Approval of a site plan by the Planning Department, the applicant shall construct the site plan improvements in complete conformity with the approved plan. Failure to do so is a violation of these regulations for this statute and subject to sanctions as set out elsewhere in these regulations or separate regulations if enacted.
- I. **Performance Guarantee May Be Required.** In the interest of ensuring compliance with the Zoning Statute, WOS 2009-007, or as amended, provisions, protecting the natural resources and the health, safety and welfare of Tribal Citizens and future users; or inhabitants of an area for which a site plan for a proposed use has been submitted, the LTBB Planning Department may require the applicant to deposit a performance guarantee as set forth herein. The purpose of the performance guarantee is to ensure completion of improvements connected with the proposed use as required by these regulations, including but not limited to, roadways, lighting, utilities, sidewalks, drainage, fences, screens, walls, landscaping, and widening strips.
- 1. Performance guarantee as used herein shall mean a cash deposit, certified check, irrevocable bank letter of credit or corporate surety bond in the amount of the estimated cost of the improvements to be made as determined by the applicant and verified by the Planning Department.
  - 2. Where the Tribal Council requires a performance guarantee, said performance guarantee shall be deposited with the LTBB Accounting Department prior to the issuance of a building permit by the Building Inspector for the development and use of the land. Upon receipt of the performance guarantee, the LTBB Accounting Department shall deposit the performance guarantee, if in the form of a cash deposit or certified check, into an interest-bearing account.
  - 3. An approved site plan shall also prescribe the period of time within which improvements for which the performance guarantee has been required are to be completed. The period will begin from the date of the issuance of the building permit.
  - 4. In the event the performance guarantee deposited is a cash deposit or certified check, the LTBB Accounting Department shall rebate to the applicant fifty (50) percent of the deposited funds when sixty (60) percent of the required improvements are completed as confirmed by the Zoning Administrator, and the remaining fifty (50) percent of the deposited funds when one-hundred (100) percent of the required improvements are

completed as confirmed by the Zoning Administrator. If a request is made by the applicant for a temporary certificate of occupancy without completion of required exterior improvements the performance guarantee herein required may be applied by said applicant to assure compliance with the Zoning Regulation standards and the specifications of the approved site plan.

5. Upon the satisfactory completion of the improvement for which the performance guarantee was required, as determined by the Zoning Administrator, the Tribal Accounting Department shall return to the applicant the performance guarantee deposited and any interest earned thereon.
6. In the event the applicant defaults in making the improvements for which the performance guarantee was required within the time period established by the LTBB, the LTBB shall have the right to use the performance guarantee deposited and any interest earned thereon to complete the improvements through contract or otherwise, including specifically the right to enter upon the subject property to make the improvements complete. If the performance guarantee is not sufficient to allow the LTBB to complete the improvements for which it was posted, the applicant shall be required to pay the LTBB the amounts by which the costs of completing the improvements exceeds the amount of the performance guarantee deposited. Should the LTBB use the performance guarantee or a portion thereof, to complete the required improvements, any amounts remaining after said completion shall be applied first to the LTBB Indirect administrative costs in completing the improvement with any balance remaining being refunded to the applicant. If the applicant has been required to post a performance guarantee or bond with another governmental agency other than the LTBB to ensure completion of an improvement associated with the proposed use prior to the LTBB conditional approval, the applicant shall not be required to deposit with the LTBB performance guarantee for that specific improvement. At the time the performance guarantee is deposited with the LTBB and prior to the issuance of a building permit, the applicant shall enter an agreement incorporating the provisions hereof with the LTBB regarding the performance guarantee.

- J. **Planning Department Report on Every Site Plan.** The Planning Department shall prepare a report of each and every site plan submitted in accordance with section K, containing a synopsis of the relevant facts contained in and related to this site plan, together with the Planning Department's proposed determination.

K. **Planning Department Approval.**

1. The Department shall review and approve the following site plans without their submission to the Tribal Chairman or Tribal Council except where the applicant so requests, the Tribal Chairman or Tribal Council so requests, or the Department so

requests, then the site plan shall be reviewed by the Tribal Chairman and/or Tribal Council before final action is taken by the LTBB Planning Department, with the understanding that Tribal Council has ultimate authority over site plans on Tribally owned land:

- a. Accessory uses incidental to a conforming existing use where said use does not require any variance and where said site plan conforms to all the requirements of these regulations.
  - b. Expansion and/or addition to an existing conforming use where said site plan conforms with all the requirements of these regulations and does not increase the size of the existing use or structure more than 25% of the present size.
  - c. Accessory storage buildings in all Zoning Districts.
  - d. Increases in off-street parking areas, parking buildings and/or structures, increases in loading/unloading spaces in commercial and industrial Zoning Districts, and landscape improvements as required by these regulations.
  - e. For those Special Land Uses so specifically identified in these regulations.
  - f. Amendments to approved site plans, except those listed above, subsequent to Tribal Council mandated modifications.
  - g. Final site plans subsequent to Tribal Council mandated modifications.
  - h. Any other site plan review not delegated for review by the Tribal Council.
2. The Planning Department shall apply all applicable standards and procedures of these regulations in approving; conditionally approving or denying site plans.
  3. Data submission requirements shall be as specified in Section B.

**L. Amendments to Approved Site Plans.**

1. Amendments to an approved site plan may be made by the Planning Department provided that such changes conform to the Zoning Statute. Minor changes to an approved site plan may be approved by the Planning Department after construction has begun provided no such change results in any of the following:
  - a. A significant change in the use or character of the development.
  - b. An increase in overall coverage of structures.
  - c. A significant increase in the intensity of use.

- d. A reduction in required open space.
  - e. A reduction in required off-street parking and loading.
  - f. A reduction in required pavement widths or utility pipe sizes.
  - g. A significant increase in traffic on public streets or an increase in the burden on public utilities or services.
2. No fees shall be required for the following minor amendments:
- a. Moving building walls within the confines of the smallest rectangle that would have enclosed each original approved building(s), relocation of building entrances or exits or shortening of building canopies.
  - b. Changing to a more restricted use provided there is no reduction in the amount of off-street parking as originally provided.
  - c. Changing the angle of parking or aisle width provided there is no reduction in the amount of required off-street parking or in reduction of aisle width below statute requirements.
  - d. Moving of ingress and egress drives a distance of not more than one-hundred (100) feet if required by the appropriate state, county or other local road authority with their jurisdiction.
  - e. Substituting landscape plan species provided a nurseryman, landscape architect, engineer or architect certifies the substituted species is similar in nature and screening effects.
  - f. Change type and design of lighting fixtures provided an engineer or architect certifies there will be no change in the intensity of light at the property boundary.
  - g. Increase peripheral yards.
  - h. Changing the location of an exterior building wall or location not more than ten (10) feet because of a natural impediment or hazard such as bedrock or muck soils provided that in so doing no setback requirement of these regulations is violated and no significant reduction in safety or in the amount of open space is thereby affected.
3. If the Zoning Administrator finds that a proposed amendment to an approved site plan does not qualify as a minor change, he or she shall immediately notify the permit holder, the Building Inspector, the Planning Department in writing that site plan approval has been suspended pending approval by the Planning Department, the Tribal Chair, or Tribal

Council, as applicable, of the proposed amendment. The permit holder's notice shall be delivered by certified mail. If construction has begun, a stop work order shall be issued by the Building Inspector for that portion of the project, which is not in compliance with these regulations. Once site plan approval for a project has been suspended, the permit holder has the option of changing the project plans to conform with the regulatory requirements, or of restarting the Site Plan Review process. When the issue has been resolved, the Zoning Administrator shall send a written notice to the permit holder, the Building Inspector, the Planning Department that the project's site plan has again been approved. This provision is not to be construed to prohibit phased development of a project, provided that each phase is developed in accordance with an approved site plan.

**M. Appeals of Final Site Plans.**

1. Any person aggrieved by a decision of the LTBB Planning Department in granting or denying approval of a final site plan on non-Tribally owned land may appeal the decision to the Zoning Board of Appeals. The appeal must be filed within seven (7) days of the decision and shall state the factual basis for the appeal. An appeal shall stay action on the issuance of any permit pursuant to an approved site plan. (Except for Lands owned by the Tribe, which shall have Tribal Council approval not the Zoning Board of Appeals, subject to the provisions of WOS 2009-007 as amended.)
2. The Zoning Board of Appeals shall review the record of action taken on the final site plan and shall determine whether the record supports the action taken. No new evidence shall be presented. The Zoning Board of Appeals shall approve the final site plan if the requirements of this section and other applicable and/or regulatory requirements are met. The Zoning Board of Appeals shall make written findings in support of its opinion on the appeal and send to the LTBB Tribal Council and the Department.

**N. As-Built Site Plan.** Upon completion of the installation of required improvements as shown on the approved final site plan, the property owner shall submit to the Zoning Administrator two (2) copies of an "as-built" site plan, certified by the engineer or surveyor, at least one (1) week prior to the anticipated occupancy of any building. The Zoning Administrator may circulate the as-built plans to the Natural Resources Department, the Environmental Program of the Natural Resources Department, the Tribal Historic Preservation Officer, and the Department directly related to the proposed use, as appropriate, for review to ensure conformity with the approved site plan and other requirements. Once each LTBB department has approved the as-built plans the Zoning Administrator may make the final inspection and issue the Occupancy Permit.

**O. Land Clearing.** No person shall undertake or carry out any such activity or use, including any grading, clearing, cutting and filling, excavating, or tree removal associated therewith for which site plan approval is first required by these regulations. Nor shall such activity proceed

prior to obtaining necessary soil erosion and sedimentation control permits, wetlands permits, or floodplains permits. Any violation of this provision is subject to the fines and penalties prescribed in these regulations for each day of the violation from the day of discovery of the incident until an approved restoration plan, or an approved site plan is granted. Further, any such penalties are be in addition to any other penalties for violations of wetland, storm water or other applicable regulations. The penalty shall consist of a fine of \$500 per day, and will be assessed cumulatively.



# Waganakising Odawak

Little Traverse Bay Bands of Odawa Indians

## Office of Tribal Chairman

7500 Odawa Circle, Harbor Springs, Michigan 49740

Phone 231-242-1418 • Fax 231-242-1411

### BUILDING CODES ADOPTION REGULATIONS

REG-WOS 2009-007 041709-005

- I. Purpose of Regulations.** The purpose of these regulations is to protect and promote the health and safety of LTBB and its citizens through adoption of various building, property maintenance, mechanical and safety codes.
- II. Definitions:**
- A. **“Building Code Administrator”** – Individual appointed by the Tribal Administrator, and charged with the responsibility for direct regulatory administration or supervision of plan review, enforcement, or inspection of building construction, erection, repair, addition, remodeling, demolition, or alteration projects that require permitting indicating compliance with building, plumbing, mechanical, electrical, gas, fire prevention, energy, accessibility, and other construction codes as required by LTBB Statute. Synonymous with Building Official.
  - B. **“Building Inspector”** - any of those contractors or employees of the Tribe or Federal agencies with building construction regulation responsibilities who themselves conduct inspections of building construction, erection, repair, addition, or alteration projects that require permitting indicating compliance with building, plumbing, mechanical, electrical, gas, fire prevention, energy, accessibility, and other construction codes as required by LTBB statute.
  - C. **“Building Permit”**- A Legal document issued by the Building Official allowing building construction, erection, repair, addition, or alteration projects to commence.
  - D. **“Construction Project”** - means an organized noncontinuous undertaking to complete a specific set of predetermined objectives for the planning, environmental determination, design, construction, repair, improvement, or expansion of buildings or facilities.
  - E. **“Contractor”**- An independent contractor means a person whose conduct is not subject to an employer’s control and direction.
  - F. **“Department”** – means the LTBB Planning Department.

- G. **“Employee”** – means any person engaged in any employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed and includes, but is not limited to, aliens and minors.
- H. **“International Code Council”** – means a membership association dedicated to building safety and fire prevention. They develop codes used to construct residential and commercial buildings, including schools. LTBB has chosen to adopt the codes developed by the International Code Council when preparing the tribal regulations.
- I. **“LTBB”** – means the Little Traverse Bay Bands of Odawa Indians or the “Tribe”.
- J. **Most recent version** – means the version of the code in question currently in use by the International Code Council or in the case of NFPA 70, the National Fire Protection Association.
- K. **NFPA** – means “National Fire Protection Association”, an advocate of fire prevention an authoritative source on public safety. NFPA develops, published, and disseminates more than three-hundred (300) consensus codes and standards intended to minimize the possibility and effects of fire and other risks.
- L. **“Plan Reviewer”** - person who is qualified to determine that plans submitted for purposes of obtaining building and other permits comply with the applicable building, plumbing, mechanical, electrical, gas, fire prevention, energy, accessibility, and other applicable construction codes. A person may be qualified in building, mechanical, gas, electrical, or a combination of the four.

**III. LTBB Planning Department Codes.** The most recent versions of the following codes are on file in the offices of the LTBB Planning Department:

- A. International Building Code;
- B. International Fire Code;
- C. International Residential Code;
- D. International Plumbing Code;
- E. International Private Sewage Code;
- F. International Mechanical Code;
- G. International Fuel Gas Code;
- H. International Energy Conservation Code, IC-700;
- I. International Property Management Code;



J. International Existing Building Code; and

K. National Electrical Code, NFPA 70

L. International Green Construction Code, National Green Building Standards;

**IV. Regulations pertaining to all Code Adoptions:**

A. **General Fee Schedule.** The fee for permits, plan review, inspections and occupancy shall be based on the table below, with the percentage of project cost varying between 4.5% and 2.15%.

Project Cost up to	Inspection Fee
\$50,000	\$2,000
\$100,000	\$4,500
\$200,000	\$8,750
\$300,000	\$12,750
\$400,000	\$16,500
\$500,000	\$20,000
\$600,000	\$23,250
\$700,000	\$26,250
\$800,000	\$29,000
\$900,000	\$31,500
\$1,000,000	\$33,750
\$1,100,000	\$35,750
\$1,200,000	\$37,500
\$1,300,000	\$39,000
\$1,400,000	\$40,250
\$1,500,000	\$41,250
\$1,600,000	\$42,000
\$1,700,000	\$42,500
\$1,800,000	\$42,750
\$1,900,000	\$42,750

\$2,000,000	\$43,000
\$4,000,000	\$50,000
Over \$4,000,000	\$60,000

**B. Alterations to Specific Code Sections.** The Little Traverse Bay Bands of Odawa Indians adopts these Codes as Tribal law with the jurisdiction in each code inserted as Little Traverse Bay Bands of Odawa Indians, and the following modifications:

**1. International Fire Code**

- a. Section 109.3 Violations, page 11, paragraph 1, line 6: insert “civil infraction,” line 7: insert \$2500.00

**2. International Plumbing Code**

- a. Section 106.6.2, Paragraph 1, line 3, Appropriate Schedule: insert “This schedule will be determined by the project.”
- b. Section 106.6.3, Paragraph 1, Numeral 2, Fee refunds: insert “100%,” numeral 3: insert “100%”.
- c. Section 108.4, Paragraph 1, line 7, Specify Offense: insert “Civil infraction,” line 8: insert “\$2500.00.”
- d. Section 108.5, Paragraph 1, line 13, Amount: insert “\$250.00,” line 14: insert “\$5000.00”

**3. International Private Sewage Disposal Code**

- a. Section 106.4.2, Paragraph 1, Fee Schedule: The fee schedule is set out in Section IV (A) 1 of these Regulations.
- b. Section 106.4.3, Paragraph 1, numeral 2 and 3: insert “100% of the fee returned.”
- c. Section 108.4, Paragraph 1, Line 7: insert “civil infraction,” line 8: insert \$100.00 for first offense and \$250.00 for second offense.
- d. Section 108.5, Paragraph 1, line 13: insert \$1000.00, line 14: insert \$10,000.00
- e. Section 405.2.5, Paragraph 1, line 2: insert “start of construction,” line 3: insert “upon completion of construction.”
- f. Section 405.2.6, Paragraph 1, line 6: insert “date of construction.”

#### 4. International Mechanical Code

- a. Section 106.5.2, Paragraph 1, line 3, Fee Schedule of Mechanical Work: The fee schedule is set out in Section IV (A) 1 of these Regulations.
- b. Section 106.5.3, Paragraph 1, Specify Percentage: insert “100%” after numeral 2, and “75%” after numeral 3.
- c. Section 108.4, Paragraph 1, line 7, Violations: insert “Civil infraction,” line 8: insert “\$2500.00.”
- d. Section 108.5, Paragraph 1, line 13, Stop work orders: insert “\$250.00,” line 14: insert “\$5,000.00.”

#### 5. International Fuel Gas Code

- a. Section 106.5.2, Paragraph 1, line 13, Appropriate Schedule: The fee schedule is set out in Section IV (A) 1 of these Regulations.
- b. Section 106.5.3, Paragraph 1, numeral 2 and 3, Fee Refunds: insert “100%”
- c. Section 108.4, Paragraph 1, line 6: insert “Civil infraction,” line 7: insert “\$2500.00.”

#### 6. International Electrical Code Administration Guide

- a. Section 404.2, Paragraph 1, line 4 (fee schedule) insert The fee schedule is set out in Section IV (A) 1 of these Regulations

#### 7. International Property Management Code

- a. Section 103.6, Page 2, Paragraph 1, line 4: The fee schedule is set out in Section IV (A) 1 of these Regulations
- b. Section 303.14, Page 10, Paragraph 1, line 1 (Date): insert “May 1st through September 31st.”
- c. Section 602.3, Page 17, Paragraph 1, Line 5 (Date): insert “September 31st through May 15.”
- d. Section 602.4, Page 17, Paragraph 1, line 3 (Date): insert “September 31st through May 15.”

C. **Interdepartmental Cooperation.** Upon request from the Department, other Executive departments shall assist the Department in these regulations to the extent permitted by LTBB law, or applicable federal law.

- D. **The Building Code Administrator** (BCA) (or a certified designee) shall have the overall responsibility for reviewing all plans and specifications for compliance with adopted codes and standards. Once the review is completed, the BCA will return appropriate documents and references for corrections, if necessary, or issue a permit. If corrections are necessary, the design professional or contractor must make corrections and provide a finalized copy of all project documents to the Building Code Administrator (BCA) before a permit will be issued.
- E. **Contractors:** All other contracted individuals and tradesmen contractors working on construction projects under the jurisdiction of the LTBB are required to work under the necessary permits. In addition, contractors must be licensed, registered, and insured in accordance with Michigan and Tribal law. There is no exception. Prior to receiving a permit, contractors are required to provide plans, specifications, and construction documents, as well as proof of their state licensing, general liability and worker's compensation insurances to the Building Code Administrator. This includes all trade disciplines from the general contractor, as well as individual contractors for building, electrical, mechanical, plumbing, fire suppression, and irrigation that may be responsible for obtaining permits. This also includes general contractors, who hire sub-contractors to work on construction projects. The general contractor has the overall responsibility to ensure his subcontractors can meet and comply with Tribal permitting requirements. It is incumbent upon all contractors to schedule inspections, as a minimum as outlined in the Building Code, or as directed by the Building Code Administrator. Inspectors have the authority to perform any additional inspections, as they deem necessary to insure compliance with code requirements and project documents. This includes all permits as well as the final Certificates of Occupancy or Completion.
- F. **Building Code Administrator Duties.** The Building Code Administrator (BCA) shall employ or contract qualified inspectors to conduct plans review and code inspections as required by the building inspection program. The BCA will have the overall responsibility in reviewing plans and specifications for compliance with adopted codes and standards. After reviewing the documents, comments will be returned with appropriate references. The BCA will issue permits to contractors upon satisfactory completion of the application process and receipt and review of all necessary documents.
1. The BCA, in conjunction with the general contractor or construction manager, will develop an inspection schedule to facilitate appropriate inspections to coincide with the project construction schedule. The BCA shall initiate construction inspections in accordance with the established inspection schedule at times requested by the appropriate contractor(s). Inspectors shall be granted permission to perform any additional inspections, as they deem necessary to insure compliance with code requirements and project documents.
  2. Upon completion of a new building, the BCA shall issue a Certificate of Occupancy (CO). The certificate of occupancy will state the building is complete, constructed in

accordance with the plans and specifications, and meets the minimum code requirements at the time of issuance of the building permit. The Fire Marshal and/or other inspecting personnel must inspect and certify the building is substantially complete prior to the BCA issuance of a Certificate of Occupancy and approved occupancy of the structure.

3. At the completion of a renovated building, The BCA shall issue a Certificate of Completion (CC). The Certificate of Completion will state the renovated portions of the building are complete, constructed in accordance with the plans and specifications, and meets the minimum code requirements at the time of issuance of the building permit.
4. A Conditional Certificate of Occupancy (CCO) or Conditional Certificate of Completion (CCC) may be issued by the Building Official at his/her discretion for a period not to exceed 60 days. If items have not been completed after the 60 day conditional occupancy, the General Contractor may be subject to additional inspection fees assessed by the Building Official.

- V. Any decision or denial of permits may be appealed to the Zoning Board of Appeals.



# Waganakising Odawak

Little Traverse Bay Bands of Odawa Indians

## Office of Tribal Chairman

7500 Odawa Circle, Harbor Springs, Michigan 49740

Phone 231-242-1418 • Fax 231-242-1411

### UTILIZATION OF TRIBALLY OWNED LAND REGULATIONS

REG-WOS-2009-007 xxxxxx-xxx

- I. Purpose of Regulations.** The purpose of these Regulations is to mandate the rights and obligations of all persons regarding the utilization of tribally owned land, and other developmental characteristics which may have an effect upon the public health, safety, and general welfare.
- II. Definitions:** The following definitions of word use shall apply:
  - A. Words used in the present tense shall include the future.
  - B. Words used in the singular number shall include the plural number and the plural the singular.
  - C. The word "**shall**" is mandatory and not discretionary.
  - D. The word "**may**" is permissive.
- III. Regulations pertaining to the Utilization of Tribally Owned Land.**
  - A. Applicability.**
    - a. These regulations apply only to the following:
      - i. All Tribal citizens or Tribal citizen owned businesses on the Reservation on land under the Tribal citizens or Tribal citizen owned business's ownership or control;
      - ii. All non-Tribal citizens or non-Tribal citizen owned businesses who, in accordance with Tribal law, lease, occupy or otherwise use Tribal fee lands or trust lands on the Reservation; and
      - iii. All Tribal citizens, non-Tribal citizens, and businesses, whether Tribal citizen owned or non-Tribal citizen owned, who, in accordance with Tribal law, lease, occupy or otherwise use Tribal trust land outside the boundaries of the Reservation.
    - b. Requirements for Traditional use. So long as the use or utilization of Tribally owned lands is of a temporary or transient nature unless otherwise noted herein;

- i. the lands may be used for traditional purposes, including religious purposes and the gathering of, or hunting for, wild or native foods, materials for paints and medicines;
  - ii. structures may be erected which are likewise of a transient or temporary nature, or if erected on land designated, zoned, or otherwise restricted to traditional or governmental uses, semi-permanent structures such as sweat lodges. may be erected so long as their utilization is of a traditional nature.
- B. **Universal Declaration of Jurisdiction.** All land, parcels, tracts, lots or other designations, either owned in fee or held in trust for the Little Traverse Bay Bands of Odawa Indians, shall hereby be covered by these regulations, and all other regulations promulgated pursuant to WOS 2009-007, as amended.
- C. **Other Uses.** All other uses of land, utilization of structures, areas, fields, woodlots, or other designations, not regulated herein, are controlled by other regulations promulgated pursuant to WOS 2009-007, as amended.

## **Appendix A: Management of Tribal Construction Projects Policy**

**Purpose:** To ensure that proper internal controls will be followed so that only valid and authorized procedures are followed. Further, to document the process to approve payments due under contracts, purchase orders or other general conditions.

**Scope:** These procedures apply to construction projects which are to be undertaken by the Tribe in which the Tribe is considered the “Owner” of the project and has a stake in the outcome of said construction, unless Tribal Council determines otherwise.

**Overview:** This document shall apply to Tribal construction projects generally, unless designated otherwise by Tribal Council:

1. Outlines the processes for developing and approving budgets, scope, design, contracts, change orders, purchase orders, and general conditions of construction projects.
2. Delineates procedures that will be implemented to ensure effective, efficient and a fair uniform method for conflict resolution is included in all contractual language:
  - ❖ Development of budgets.
  - ❖ Development of work plan and schedule for project.
  - ❖ Execution of standardized or otherwise approved contracts and (AIA, EJCDC)
  - ❖ Completion of Tribal Projects via uniform and reproducible methods.
  - ❖ Timely Payments.

### **Definitions:**

1. “AIA” The American Institute of Architects.
2. “Bidding Phase” The phase of the project in which bids are solicited for the project and contract award documents are prepared for signature by the Owner and Contractor.
3. “Capital Expenditure Plan” Define . . . a plan developed by the Planning Department that is a 3 to 5 year plan that is annually approved by Tribal Council with the submission of the annual budget.
4. “Capital Project Fund” A fund which is designated by Tribal Council for the construction of specific projects. Special conditions apply to these types of funds during the overall development of the project which require additional oversight.
5. “CFO” means the Chief Financial Officer of LTBB.



6. "Change Order Item" A change order item is a change in the plans and detail sheets or changes in the scope of work which result in a change in costs. This also includes Contractor claims and requests for extras or force account work. Additional contract time may or may not be required.
7. "Conceptual Phase" The initial phase of a project during which the appropriate Tribal Staff develop a concept as to the limits and budget for the project.
8. "Construction Contract" The contract between LTBB and the construction entity responsible for the construction of the project.
9. "Construction Documents" The Construction Contract, Drawings, and Specifications developed by the Design Professional which document the conditions of the project as agreed upon by the Owner, Contractor and Design Professional.
10. "Construction Phase" The phase of the construction project in which the project is constructed.
11. "Construction Project" means an organized noncontinuous undertaking to complete a specific set of predetermined objectives for the planning, environmental determination, design, construction, repair, improvement, or expansion of buildings or facilities.
12. "Contract Amount" For the purposes of awarding the contract and determining the amount of the performance and payment bonds, the contract amount, or total bid, is the summation of the products of the quantities shown in the proposal by the unit bid prices plus state sales tax or use tax, as applicable. Quantities shown on the proposal and contract forms are estimates only, given only as a basis for comparison of bids. Increases or decreases in the quantity of any bid item in relation to the proposal quantity will occur, based on conditions in the field. Also, quantities may change as a result of changes in the scope of work, as determined by the Tribal Chairperson or designee. The basis of payment is the actual quantity measured in the field, multiplied by the unit bid price of the item of work performed. The resulting amount of payment is based on the acceptance of work performed under the scope of the contract.
13. "Contract Price" The mutually agreed upon amount that the Tribe pays to a contractor on completion of the contract, in accordance with contract terms and conditions and their subsequent modifications (if any).
14. "Contract Scope" The division of work to be performed under a contract or subcontract in the completion of a project. Also called Scope.
15. "Contract Time" Each contract specifies a time of completion of the project, measured in either calendar days or working days from the date that the Notice to Proceed is issued. This time of completion can be adjusted as per 3.02 (c).
16. "Design Acceptance Phase" The phase of a project in which the design professional submits final plans to the Owner's Representative for acceptance by the Tribe.

17. "Design Contract" The contract between LTBB and the Design Professional which should include all items necessary to facilitate and complete the design.
18. "Design Development Phase" The phase of a project in which the Design Professional develops plans, specifications, estimates and obtains any permits or clearances which will be required for the successful completion of the project.
19. "Design Professional" The Architect or Engineer selected by the Tribe via the Qualification Based Selection process. The Design Professional selected by the Tribe shall be a registered professional in the State of Michigan. The Design Professional shall have a registration for the type of work which they are contracted to perform.
20. "Design/Bid/Build Project" The standard form of project phasing which results in the most efficient use of funds and minimizes the chances for project overages.
21. "EJCDC" The Engineers Joint Contract Document Committee. A joint venture of key contractor and engineering professional associations charged with producing standardized documents for use on construction projects involving the use of engineering services, as well as guidelines and commentaries on the use of these documents.
22. "Field Adjustment" A field adjustment is a change in the plans and detail sheets and/or proposal quantities or minor changes in the scope of work which result in no additional costs. This does not include Contractor claims for delay or requests for extras or force account work. No additional contract time is required.
23. "GMP" Guaranteed Maximum Price
24. "GMP Project" A specialized type of project in which the Project is bid out for construction prior to the completion of the Design Development Phase.
25. "Land and Reservation Committee" Committee of the Tribal Council as defined by LTBB Statute WOS 2008-02.
26. "Legal" The Legal Department of the LTBB Legislative Branch plus that legal review by staff of, or consultants to, the Executive Branch as required.
27. "LTBB" The Little Traverse Bay Bands of Odawa Indians.
28. "Notice to Proceed" The formal document that the Owner's Representative delivers to the construction entity informing them that work on the project can begin.
29. "Owner's Representative" means the person selected by the Tribal Chairperson or his/her designee to represent the Tribe in communications with the architects, engineers and contractors in order to complete the project and to provide general management of the project (namely: budget, schedule, scope, and quality).

30. "Project Budget" The budget which is developed by the Owner's Representative and Approved by the Tribal Chairperson or his/her designee and CFO or his/her designee which includes all aspects of all phases of design and construction. Projects which are funded by unrestricted General Funds Balance appropriated by Tribal Council will require an additional approval of the Project Budget by Tribal Council prior to approval by the Tribal Chairperson or his/her designee. Project Budgets will be used to develop the LTBB Accounting Department budget or budgets which correspond with the project.
31. "Qualification Based Selection" The process for selecting Architectural and Engineering professionals which is required by federal law to be used as the selection process for Design Professionals which are funded by federal funds (Brooks A-E Act, 40 U.S.C 1101-1104 and Part 36 of the Federal Acquisition Regulation (FAR)).
32. "Reasonable Person" Denotes a hypothetical person in society who exercises average care, skill, and judgement in conduct and who serves as a comparative standard for determining liability.
33. "Tribal Chairperson" The current Tribal Chairperson duly elected by the members of the LTBB and includes the Chairperson under the Constitution or an appointed representative thereof.
34. "Workgroup" Team of appointed individuals focused on a specific job or project who are appointed by the Tribal Chairperson or his/her designee and serve in an advisory capacity to the Owner's Representative, who serves as the Chairperson of the workgroup.

Procedure:

## **Article I. Project Conception, Budgets and Funding**

*Section 1.01* Project Concepts will be submitted to the Planning Department for inclusion in the Long Term Capital Project Plan.

- (a) Project Concepts must include Preliminary Budget, including intended funding source and a 25% contingency, a proposed operating budget (if applicable), a conceptual scope and a statement from the Tribal Chairperson or his/her designee designating the Owner's Representative.
- (b) Project Concepts will include a preliminary site selection map to include zoning information and parcel dimensions.
- (c) Any known infrastructure (water, sewer, gas electric, roads, etc.) that will be required for the project shall be included in the Project Concept.
- (d) The Planning Department will submit project concepts to the Land and Reservation Committee for recommendation to Tribal Council for approval.

*Section 1.02* The project will have a Project Budget. This budget will be developed by the Owner's Representative in consultation with the Planning Department, reviewed by the CFO or his/her

designee, and approved by the Tribal Chairperson or his/her designee and Tribal Council. The budget will include ALL costs related to the project.

- (a) Project Budget can be developed preliminarily during the Conceptual Phase of the project.
- (b) Project Budget should consider all available information during the Conceptual Phase, and be modified as necessary throughout the project.
- (c) There are four types of funding sources which budgets can be derived from.
  - (i) Capital Project Funds
    - 1) General Fund Balance funds allocated by Tribal Council to fund specific projects. Budgets and major project changes must be approved by Tribal Council.
  - (ii) Yearly Capital Expenditure budget
    - 1) A yearly budget that contains a line-item list of the estimated costs for each project that is approved by Tribal Council and administered by the Tribal Chairperson or his/her designee, in accordance with the Tribal Council approved Capital Expenditure Plan.
    - 2) Generally used for smaller improvement projects.
    - 3) No additional Tribal Council approval is required after the initial appropriations.
  - (iii) Grant funded projects
    - 1) Projects which utilize grant funds for Tribal construction projects.
    - 2) Tribal Council approves the initial grant application by certified motion.
    - 3) No further approval by Tribal Council is required for grant budgets after initial approval.
    - 4) Budget modification may be subject to approval by granting agency.
  - (iv) Projects funded by P.L. 638 Indian Reservation Roads Construction Contract
    - 1) Planning Department develops the Tribal Transportation Improvement Plan (TTIP), or other programming document, for Tribal Council approval and submittal to BIA.
    - 2) Tribal Council approves the TTIP (or other programming document) at least every three years.
    - 3) No further Tribal Council approval of individual Project Budget is required.

*Section 1.03* Reallocation of line items and contingency within the Project Budget that do not affect the approved scope will be reviewed by the Owner's Representative and approved by the appropriate process according to the funding source and project.

*Section 1.04* An increase in the overall Project Budget OR a material change in the scope will require approval by the process which was used in the original approval of the budget after review by the CFO or his/her designee as required in section 1.02.

*Section 1.05* All initial design, quality, schedule and other documents will be reviewed by the Owner's Representative and agreed upon by the Tribal Chairperson or his/her designee. Subsequent such documents which do not alter the approved scope or total project budget shall be reviewed and approved by the Owner's Representative.

*Section 1.06* Funding limits for the project shall be established based on the funding source and availability of funds. Project Budget must be within fiscal constraints required by funding availability. When funding for project is obligated, CFO or his/her designee shall assign staff accountant to the project.

*Section 1.07* The Owner's Representative must evaluate available construction management models for the project and submit a recommendation to the Tribal Chairperson or his/her designee for approval.

- a. Construction management models:
  - (i) Traditional (Design-Bid-Build)
  - (ii) Construction Management Firm
  - (iii) Construction Management at Risk
  - (iv) Design Build (Turn-Key)
  - (v) Tribe as a General Contractor
  - (vi) GMP (may be included in any of the above)

## **Article II. Design Phase**

### *Section 2.01* Selection of the Design Firm

- (a) Owner's Representative shall determine in consultation with the Planning Department the appropriate type of Design Professional (Architect or Engineer) for the project.
- (b) Owner's Representative shall develop a Request for Qualifications (RFQ) (with assistance from the Planning Department if necessary) that will be posted for public notice in accordance with the Brooks A-E Act (40 U.S.C. 1101-1104).
- (c) Selection of the Design Professional will be done in accordance with the standard procedures for Qualifications Based Selection (QBS).

- (i) Owner's Representative will, with the assistance of the Planning Department or other applicable departments, score the respondents based on applicable criteria for the project. Scoring criteria will be predefined by the Owner's Representative and will be included in the request for qualifications document.
  - (ii) An Interview shall be set for projects over \$400,000.00. The top three (if three or more Design Professionals respond to the RFQ) scoring firms will be scheduled for an interview by the Owner's Representative. The interview committee shall include the Owner's Representative, a staff person from the Accounting Department (appointed by the CFO, or his/her designee), and a staff member from the Planning Department (appointed by the Planning Director) as well as any other staff that is deemed appropriate by the Owner's Representative.
  - (iii) The Owner's Representative will then provide a written recommendation to the Tribal Chairman or his/her designee as to the firm which is most qualified for the project. The Tribal Chairman or his/her designee then provides written approval of the selected firm.
- (d) Owner's Representative will begin negotiation process with selected firm.
- (i) If contract amount is less than \$3,000, the Independent Contracting Agreement (ICA) format contract will be used. If contract amount is \$3,000 or greater, the approved EJCDC E500 or the appropriate AIA contract template will be used.
  - (ii) Items to be included in the scope of the selected firm (if applicable)
    - 1) Topographic and/or boundary survey
    - 2) Preliminary plans and specifications
    - 3) Final plans and specifications
    - 4) Archeological/Environmental clearance documentation
    - 5) Right of Way/Easement documents
    - 6) Opinion of construction cost
    - 7) Complete bidding services including advertising in appropriate medium
    - 8) Construction Engineering services to include site layout (construction staking) and materials testing
    - 9) Any further items that the Owner's Representative deems appropriate or applicable
  - (iii) Insurance requirements shall be as follows: (except as determined by Legal Counsel)

The Contractor shall carry Worker's Compensation, Employer's Liability, Commercial General Liability and/or Professional Liability Insurance Coverage, as required by law. In the event that the Contractor uses subcontractors for the performance of services required under this proposal, the Contractor shall ensure that said subcontractors carry Worker's Compensation and Employer's Liability Insurance. The Contractor shall be responsible for insuring all its vehicles, equipment, tools and all materials which it may use and/or leave the work site during work process. The Tribe shall not be responsible for any loss or damage to the Contractor's vehicles, equipment, tools and materials. The Contractor shall procure and maintain during the term of the contract Commercial General Liability or Professional Liability Insurance on an "occurrence basis" with limits of liability of not less than \$1,000,000 per occurrence combined single limit, for Personal injury. Bodily injury and Property Damage Coverage shall include the following extensions: 1.) Contractual Liability; 2.) Products and Completed Operations Coverage; 3.) Independent Contractors Coverage; and 4.) Broad Form General Liability Extensions or equivalent. The Contractor shall maintain Vehicle Liability Coverage, and Michigan No-Fault coverage's including all owned, non-owned, and hired vehicles, of not less than \$1,000,000 per occurrence combined single limit. The Contractor will provide "Certificate(s)" of insurance coverage prior to start of contract term. If any of the above coverage's expires during the term of the contract, the Contractor's insurer shall deliver renewal certification and/or policies to: Little Traverse Bay Bands of Odawa Indians, Attn: Accounting Contracts Personnel, 7500 Odawa Circle, Harbor Springs, Michigan 49740.

- (e) When the Owner's Representative and the Design Professional have reached an agreement on the project scope, price and schedule the Owner's Representative shall forward the proposed contract which has been signed by the Design Professional to the CFO or his/her designee to be reviewed for conformance with the Project Budget and funding source requirements. The Owner's Representative shall fill out and concurrently submit the Major Alteration Approval Notification Process Form (MAANPF) in conjunction with the proposed contract.
- (f) The CFO or his/her designee then submits the contract and the MAANPF to the Tribal Chairman or his/her designee for approval and signature.
- (g) CFO or his/her designee then forwards copies of the executed contract to the Owner's Representative.
- (h) Owner's Representative forwards to Design Professional.

#### *Section 2.02 Management of Design Process*

- (a) Owner's Representative shall monitor invoices from Design Firm to ensure timely progress in conjunction with services billed.
- (b) Owner's Representative will be the contact for the Design Professional during all phases and will delegate tasks and issues that arise during the course of the design phase to appropriate parties.

- (c) Subject to standard contract language, means and methods are the exclusive purview of the Contractor or Designer. At no time during any phase of the Project will Owner direct the means or methods of parties under contract with the LTBB.
- (d) Invoices for Design Professional services will be sent to the LTBB Accounting Department for processing.
  - (i) Accounting Department will scan invoice and e-mail to the Owner's Representative for review and approval.
  - (ii) Once approved, the Owner's Representative will reply to the Accounting department e-mail with the words "O.K. to Pay" along with the account number(s) and purchase order number from which the invoice is to be paid.
  - (iii) Invoice will then be paid by the LTBB Accounting Department.
- (e) Design Contract Amendment
  - (i) A contract amendment is a written change to the design contract prepared by the Design Professional, and signed by LTBB.
    - 1) A contract amendment requires an agreement upon a change in the scope of the work, the contract sum, and/or the contract time.
  - (ii) To initiate a contract amendment the Design Professional or LTBB must suggest a change in the contract. The Design Professional will then provide a price for the suggested change.
    - 1) Contract amendment is then developed by the Design Professional, and submitted to the Owner's Representative with supporting documentation including LTBB Contract Amendment Form.
    - 2) Owner's Representative reviews the proposed contract amendment and supporting documentation with regard to the budget, project concept, and project schedule, and then submits the proposed amendment to the accounting department for processing and review by the CFO or his/her designee.
    - 3) CFO or his/her designee reviews the proposed contract amendment for consistency with budget and funding source requirements and submits the proposed amendment to Tribal Chairperson or his/her designee for approval.
    - 4) Tribal Chairperson or his/her designee then forwards the executed contract amendment to the CFO or his/her designee.
    - 5) CFO or his/her designee forwards a copy of the executed contract amendment to the Owner's Representative.



- 6) Owner's Representative then forwards a copy of executed contract amendment to Design Professional.

### *Section 2.03 Bidding Process*

- (a) Owner's Representative, in consultation with Design Professional, will determine bidding advertising timeframe, generally between 3 and 6 weeks, depending on the complexity of the project.
- (b) The Design Professional should prepare bidding documents and write advertisement for bids and forward to the Owner's Representative.
- (c) Owner's Representative, in conjunction with Planning Department, will forward advertisement to LTBB Accounting Department for placement in appropriate publications.
- (d) Owner's Representative will be present at bid opening to ensure the Design Professional conducts a fair bid opening process and develops bid tabulation.
- (e) Design Professional shall do an in depth analysis of the bids received and return a recommendation of award to the Owner's Representative. Owner's Representative shall forward recommendation to the Tribal Chairperson or his/her designee for approval.
- (f) Owner's Representative shall issue a notice of award to selected Contractor and initiate the development of the construction contract.
- (g) If bid exceeds available funding, Owner's Representative will meet with Design Professional to determine appropriate action.
- (h) At end of bidding process, Owner's Representative shall forward all bidding documents to the Staff Accountant assigned by the CFO or his/her designee.

## **Article III. Construction Phase**

### *Section 3.01 Contracting Activities*

- (a) Where standard contracts, change orders, or Independent Contractor Agreements are used such that the Legal Department has previously approved, legal review will not be required. This includes the two standard sets of LTBB-modified contractual documents, hereafter referred to as the EJCDC document and the AIA document.
- (b) After notice of award and during the development of the construction contract, the Owner's Representative shall ensure that the Contractor has performance and payment bonds in place and meets the following insurance requirements: (except as determined by legal)

The Contractor shall carry Worker's Compensation, Employer's Liability, Commercial General Liability and/or Professional Liability Insurance Coverage, as required by law. In the event that the

Contractor uses subcontractors for the performance of services required under this proposal, the Contractor shall ensure that said subcontractors carry Worker's Compensation and Employer's Liability Insurance. The Contractor shall be responsible for insuring all its vehicles, equipment, tools and all materials which it may use and/or leave the work site during work process. The Tribe shall not be responsible for any loss or damage to the Contractor's vehicles, equipment, tools and materials. The Contractor shall procure and maintain during the term of the contract Commercial General Liability or Professional Liability Insurance on an "occurrence basis" with limits of liability of not less than \$1,000,000 per occurrence combined single limit, for Personal injury. Bodily injury and Property Damage Coverage shall include the following extensions: 1.) Contractual Liability; 2.) Products and Completed Operations Coverage; 3.) Independent Contractors Coverage; and 4.) Broad Form General Liability Extensions or equivalent. The Contractor shall maintain Vehicle Liability Coverage, and Michigan No-Fault coverage's including all owned, non-owned, and hired vehicles, of not less than \$1,000,000 per occurrence combined single limit. The Contractor will provide "Certificate(s)" of insurance coverage prior to start of contract term. If any of the above coverage's expires during the term of the contract, the Contractor's insurer shall deliver renewal certification and/or policies to: Little Traverse Bay Bands of Odawa Indians, Attn: Accounting Contracts Personnel, 7500 Odawa Circle, Harbor Springs, Michigan 49740.

- (c) If re-design is necessary to enable the project to meet budget constraints and is allowable by the funding source, the Owner's Representative shall work in conjunction with the Design Professional and selected Contractor to develop a proposal which will be presented to the CFO or his/her designee for processing. The Owner's Representative shall ensure that any redesign is consistent with the allocated budget.
- (d) When contract is finalized, signed by the Contractor and accompanied by all documentation from the selected Contractor, the Owner's Representative shall present the contract to the CFO or his/her designee for signature.
- (e) The construction services contract will be approved by the Tribal Chairperson or his/her designee if it is within the established funding limits and time constraints and consistent with the concept of the project.
- (f) After Tribal Chairperson or his/her designee has signed the Construction Contract, the Owner's Representative shall issue a Notice to Proceed to the Contractor.

### *Section 3.02 Contract Change Procedures*

#### *(a) Field Work Order*

- (i) This process will be used only in situations which by a reasonable person would be deemed an unavoidable emergency.

(ii) Field work orders are used for minor changes in the work which do not affect the contract sum or the contract time. Field work orders are for changes which are required for the project to stay consistent with the intent of the contract documents.

(iii) Field work orders are prepared by the Design Professional and can be approved by the Owner's Representative.

(b) Construction Change Directive

(i) Process will be used only in situations which by a reasonable person would be deemed an unavoidable emergency.

(ii) A construction change directive is a written order that is prepared by the Design Professional, and forwarded to the Owner's Representative for signature by the Tribal Chairperson or his/her designee. This document is issued prior to an agreement with the Contractor as to an increase in cost or time, which must be negotiated after the work takes place.

(iii) Construction change directive shall include provisions for the basis of the adjustment.

(iv) The Contractor proceeds with the work immediately upon receipt of the directive. If the Contractor agrees with the method for adjustment, the change is effected by a Change Order following the determination of the adjustment.

(v) If Contractor does not agree with the method for adjustment, the method and adjustment are determined by the Design Professional

1) Upon agreement with the determination by the Architect or Engineer, the change is effected by a change order.

(c) Change Order

(i) A change order is a written order prepared by the Design Professional, and signed by LTBB Owner's Representative, CFO or his/her designee, Chairperson or his/her designee and the Contractor.

1) A change order requires an agreement upon a change in the work, the contract sum, and/or the contract time.

(ii) To initiate a change order, the Contractor, Design Professional or LTBB must suggest a change in the design. The Contractor will then provide a price for the suggested change.

1) Change order is then developed by the Design Professional and submitted to the Owner's Representative with supporting documentation. If the Design Professional does not agree with the price, Design Professional may adjust the price if deemed necessary by the Owner's Representative.

- 2) Owner's Representative reviews change order and supporting documentation in accordance with budget, project concept, and construction schedule, then submits change order to CFO or his/her designee with the Major Alteration Approval Notification Process Form (MAANPF).
- 3) CFO or his/her designee reviews change order for consistency with budget and funding source requirements and submits change order to Tribal Chairperson or his/her designee for approval.
- 4) CFO or his/her designee then forwards the executed Change Order to the Owner's Representative, Tribal Chairperson or his/her designee, Contractor and Design Professional.

### *Section 3.03 General Conditions and Purchase Orders*

- (a) Some general condition items (such as materials testing, surveys, permits and fees) may need to be paid directly by the Tribe rather than by the General Contractor. When included in the project budget, these costs will be paid from the invoice pursuant to normal payment policies of the Tribe when approved by the Tribal Chairperson or his/her designee. Purchase orders rather than contracts will be used for goods and services where it is appropriate to do so given the nature of the transaction. If the Purchase Order is for less than \$3,000 it will be reviewed by the Owner's Representative and sent to the LTBB Accounting Department for approval by the Tribal Chairperson or his/her designee.
- (b) Purchase orders greater than \$3,000 will be processed for approval as specified in 3.02 (c) (ii) except that legal review may not be required depending on purchase order items.

## **Article IV. Payments**

*Section 4.01* Payments required under the terms of an approved Construction Contract or purchase order as specified above will be reviewed and certified by the Design Professional before being sent to the Owner's Representative for review. Within five (5) working days the Owner's Representative will review, approve, then forward pay requests to the CFO or his/her designee for processing. Within five (5) working days the CFO or his/her designee will forward pay requests to the Tribal Chairperson or his/her designee for review and approval within 10 working days. Pay requests will then be sent to Tribal accounts payable for payment within the time frame as required by the construction contract.

- (a) Owner's Representative shall ensure that payment request package is complete prior to approval. Possible items which may be included are Design Professional certification, Contractor's sworn statements, invoices for stored materials, certificates of insurance for materials stored off site, updated construction schedule, and construction photographs.

## **Article V. Post Construction Phase**

*Section 5.01* Upon the Design Professional's and Owner's Representative designation of Substantial Completion, the project will proceed to the post construction phase.

- (a) Substantial completion is the stage in the progress of the work when the work is sufficiently complete for its intended use.

- (b) When the project has been deemed substantially complete the Owner's Representative may apply for a partial use and occupancy permit from the Tribal Building Official.

*Section 5.02* The Design Professional will provide the owner and Contractor a punch list of items to be completed prior to the project's designation of Final Completion.

- (a) The Contractor shall not be paid the final payment amount until the Design Professional has determined that all punch list items are complete and deems the project as Finally Complete. Furthermore, the Design Professional shall, upon final completion, certify the payment request from the Contractor prior to final payment by the Tribe.

*Section 5.03* Prior to final payment the Owner's Representative shall obtain from the Contractor via the Design Professional all operational and maintenance manuals for the project, warranty documentation and as-built drawings.

*Section 5.04* When final payment has been issued to the Contractor, the Tribe represents that there will be no further claim and that the Contractor has fulfilled its obligations under the contract except for warranty conditions. Furthermore, by making the final payment, the Tribe agrees to and accepts the work in its current condition.

## **Article VI. Dispute Resolution**

*Section 6.01* If a Contractor has a dispute regarding contract terms or payment the Contractor will first address such issues with the Owner's Representative. If resolution cannot be achieved the Contractor may then follow the contractual dispute resolution process.

## **Article VII. Quarterly Reports**

*Section 7.01* A quarterly report will be provided by the Owner's Representative to the Tribal Chairperson or his/her designee covering Project Budget, Project Scope, schedule and other issues the Tribal Chairperson or his/her designee should be made aware of.



# Little Traverse Bay Bands of Odawa Indians

## Major Alteration Approval Notification Process Form

(Capital Project Approval Process)

Date: \_\_\_\_\_

Budget Year: \_\_\_\_\_

Project Name: \_\_\_\_\_ PO# \_\_\_\_\_

Name of Contractor(Vendor): \_\_\_\_\_ Fund# \_\_\_\_\_

- ☐ Contract      ☐ Change Order      ☐ Purchase Order      ☐ Notice to Proceed  
☐ GMP Amendment      ☐ Pay Application #\_\_\_\_.

Nature of work to be performed or product to be purchased: \_\_\_\_\_

Current Contract Amount: \_\_\_\_\_

Change Amount: \_\_\_\_\_

New Contract Total: \_\_\_\_\_

Within Project Budget (yes or no): \_\_\_\_\_

ALL OF THE FOLLOWING INDIVIDUALS MUST REVIEW AND SIGN OFF ON THIS DOCUMENT BEFORE IT IS PRESENTED TO THE CHAIRMAN OR HIS/HER DESIGNEE WHO SHALL REVIEW AND SIGN THIS FORM AND ANY CONTRACT DOCUMENTS.

OWNER'S REPRESENTATIVE \_\_\_\_\_  
(Printed Name) (Signature) (Date)

Comments \_\_\_\_\_

CHIEF FINANCIAL OFFICER \_\_\_\_\_  
(Printed Name) (Signature) (Date)

Comments \_\_\_\_\_

LEGAL REVIEW \_\_\_\_\_  
(Printed Name) (Signature) (Date)

Comments \_\_\_\_\_

TRIBAL CHAIR \_\_\_\_\_  
(Printed Name) (Signature) (Date)

Comments \_\_\_\_\_

### Planning Department

☐ Received by: \_\_\_\_\_  
(Print Name) (Signature) (Date)

## **Appendix B: Outdoor Lighting Standards**

**Statement of Need and Purpose:** Good outdoor lighting at night benefits everyone. It increases safety, enhances the Reservation's night time character, and helps provide security. New lighting technologies have produced lights that are extremely powerful, and these types of lights may be improperly installed so that they create problems of excessive glare, light trespass, and higher energy use. Excessive glare can be annoying and may cause safety problems. Light trespass reduces everyone's privacy, and higher energy use results in increased costs for everyone. There is a need for a lighting regulation that recognizes the benefits of outdoor lighting and provides clear guidelines for its installation so as to help maintain and compliment the Reservation's character. Appropriately regulated, and properly installed, outdoor lighting will contribute to the safety and welfare of the residents of the Reservation.

This regulation is intended to reduce the problems created by improperly designed and installed outdoor lighting. It is intended to eliminate problems of glare, minimize light trespass, and help reduce the energy and financial costs of outdoor lighting by establishing regulations which limit the area that certain kinds of outdoor-lighting fixtures can illuminate and by limiting the total allowable illumination of lots located in the Reservation. All business, residential, and community driveway, sidewalk, and property luminaires should be installed with the idea of being a "good neighbor", with attempts to keep unnecessary direct light from shining onto abutting properties or streets.

**Definitions:** For the purposes of this Regulation, terms used shall be defined as follows:

1. "Direct Light" Light emitted directly from the lamp, off of the reflector or reflector diffuser, or through the refractor or diffuser lens, of a luminaire.
2. "Fixture" The assembly that houses the lamp or lamps and can include all or some of the following parts: a housing, a mounting bracket or pole socket, a lamp holder, a ballast, a reflector or mirror, and/or a refractor or lens.
3. "Flood or Spot light" Any light fixture or lamp that incorporates a reflector or a refractor to concentrate the light output into a directed beam in a particular direction.
4. "Fully-shielded lights" outdoor light fixtures shielded or constructed so that no light rays are emitted by the installed fixture at angles above the horizontal plane as certified by a photometric test report.
5. "Glare" Light emitting from a luminaire with intensity great enough to reduce a viewer's ability to see, and in extreme cases causing momentary blindness.
6. "Grandfathered luminaires" Luminaires not conforming to this code that were in place at the time this code was voted into effect. When a regulation "grandfathers" a luminaire, it means that such

already-existing outdoor lighting does not need to be changed unless a specified period is specified for adherence to the code.

7. "Height of Luminaire" The height of a luminaire shall be the vertical distance from the ground directly below the centerline of the luminaire to the lowest direct-light-emitting part of the luminaire.
8. "Indirect Light" Direct light that has been reflected or has scattered off of other surfaces.
9. "Lamp" The component of a luminaire that produces the actual light.
10. "Light Trespass" The shining of light produced by a luminaire beyond the boundaries of the property on which it is located.
11. "Lumen" A unit of luminous flux. One foot-candle is one lumen per square foot. For the purposes of this Regulation, the lumen-output values shall be the INITIAL lumen output ratings of a lamp.
12. "Luminaire" This is a complete lighting system, and includes a lamp or lamps and a fixture.
13. "Outdoor Lighting" The night-time illumination of an outside area or object by any man-made device located outdoors that produces light by any means.
14. "Temporary outdoor lighting" The specific illumination of an outside area of object by any man-made device located outdoors that produces light by any means for a period of less than 7 days, with at least 180 days passing before being used again.

## **Article I.**

*Section 1.01 REGULATIONS:* All public and private outdoor lighting installed in the

- (a) Reservation shall be in conformance with the requirements established by this Regulation. All previous language and regulations regarding outdoor lighting is replaced with this regulation.

*Section 1.02 CONTROL OF GLARE -- LUMINAIRE DESIGN FACTORS:*

- (a) Any luminaire with a lamp or lamps rated at a total of MORE than 1800 lumens, and all flood or spot luminaires with a lamp or lamps rated at a total of MORE than 900 lumens, shall not emit any direct light above a horizontal plane through the lowest direct-light-emitting part of the luminaire.
- (b) Any luminaire with a lamp or lamps rate at a total of MORE than 1800 lumens, and all flood or spot luminaires with a lamp or lamps rated at a total of MORE than 900 lumens, shall be mounted at a height equal to or less than the value  $3 + (D/3)$ , where D is the distance in feet to the nearest property boundary. The maximum height of the luminaire may not exceed 25 feet.

*Section 1.03 EXCEPTIONS TO CONTROL OF GLARE:*



- (a) Any luminaire with a lamp or lamps rated at a total of 1800 lumens or LESS, and all flood or spot luminaires with a lamp or lamps rated at 900 lumens or LESS, may be used without restriction to light distribution or mounting height, except that if any spot or flood luminaire rated 900 lumens or LESS is aimed, directed, or focused such as to cause direct light from the luminaire to be directed toward residential buildings on adjacent or nearby land, or to create glare perceptible to persons operating motor vehicles on public ways, the luminaire shall be redirected or its light output controlled as necessary to eliminate such conditions.
- (b) Luminaires used for public-roadway illumination may be installed at a maximum height of 25 feet and may be positioned at that height up to the edge of any bordering property.
- (c) All temporary emergency lighting need by emergency services such as Law Enforcement, as well as all vehicular luminaires, shall be exempt from the requirements of this article.
- (d) All hazard warning luminaires required by Federal or other Tribal regulatory agencies are exempt from the requirements of this article, except that all luminaires used must be red and must be shown to be as close as possible to the required minimum lumen output requirement for the specific task.
- (e) Luminaires used primarily for sign illumination may be mounted at any height to a maximum of 25 feet, regardless of lumen rating.
- (f) Law Governing Conflicts. Where any provision of federal, or Reservation statutes, codes, or laws conflicts with any provision of this regulation, the most restrictive shall govern unless otherwise regulated by law.

#### *Section 1.04 OUTDOOR ADVERTISING SIGNS.*

- (a) Top Mounted Fixtures Required. Lighting fixtures used to illuminate an outdoor advertising sign shall be mounted on the top of the sign structure. All such fixtures shall comply with the shielding requirements of Section 2.2. Bottom-mounted outdoor advertising-sign lighting shall not be used.
- (b) Outdoor advertising signs of the type constructed of translucent materials and wholly illuminated from within do not require shielding. Dark backgrounds with light lettering or symbols are preferred, to minimize detrimental effects. Unless conforming to the above dark background preference, total lamp wattage per sign shall be less than 41 watts.
- (c) Compliance Limit. Existing outdoor advertising structures shall be brought into conformance with this Code within five years from the date of adoption of this provision.

#### *Section 1.05 RECREATIONAL FACILITIES.*

- (a) Any light source permitted by this Code may be used for lighting of outdoor recreational facilities (public or private), such as, but not limited to, football fields, soccer fields, baseball fields, softball fields, tennis courts, or show areas, provided all of the following conditions are met:
  - (i) All fixtures used for event lighting shall be fully shielded as defined in Section 2.2 of this Code, or be designed or provided with sharp cut-off capability, so as to minimize up-light, spill-light, and glare to the maximum extent possible.
  - (ii) All events shall be scheduled so as to complete all activity before or as near to 10:30 p.m. as practical, but under no circumstances shall any illumination of the playing field, court, or track be permitted after 11:00 p.m. except to conclude a scheduled event that was in progress before 11:00 p.m. and circumstances prevented concluding before 11:00 p.m.

*Section 1.06 PROHIBITIONS.*

- (a) Laser Source Light. The use of laser source light or any similar high intensity light for outdoor advertising or entertainment, when projected above the horizontal is prohibited.
- (b) Searchlights. The operation of searchlights for advertising purposes is prohibited, except where permitted on a case-by-case basis by Tribal Council.
- (c) Outdoor Advertising Off-Site Signs. Electrical illumination of outdoor advertising off-site signs is prohibited between the hours of 11:00 p.m. and sunrise.

*Section 1.07 TEMPORARY OUTDOOR LIGHTING.*

- (a) Any temporary outdoor lighting that conforms to the requirements of this Regulation shall be allowed. Nonconforming temporary outdoor lighting may be permitted by the Board of Appeals after considering: (1) the public and/or private benefits that will result from the temporary lighting; (2) any annoyance or safety problems that may result from the use of the temporary lighting; and (3) the duration of the temporary nonconforming lighting. The applicant shall submit a detailed description of the proposed temporary nonconforming lighting to the Board of Appeals, who shall consider the request at a duly called meeting of the Board of Appeals. Prior notice of the meeting of the Board of Appeals shall be given to the applicant and to the Planning Department. The Board of Appeals shall render its decision on the temporary lighting request within two weeks of the date of the meeting. A failure by the Board of Appeals to act on a request within the time allowed shall constitute a denial of the request.

**Article II.**

*Sectino 2.01 GRANDFATHERING OF NONCONFORMING LUMINAIRES:*

- (a) All luminaires lawfully in place prior to the date of the Regulation shall be grandfathered. However, any luminaire that replaces a grandfathered luminaire, or any grandfathered luminaire that is

moved, must meet the standards of this Regulation. Advertising signs are grandfathered only for a period of five years, as specified in section 2.4.C.

- (b) Grandfathered luminaires that direct light toward streets or parking lots that cause disability glare to motorists or cyclists should be either shielded or re-directed within 90 days of notification, so that the luminaires do not cause a potential hazard to motorists or cyclists.

### **Article III.**

#### *Section 3.01 NEW SUB-DIVISION CONTRUCTION.*

- (a) Submission Contents. The applicant for any permit required by any provision of the laws of LTBB in connection with proposed work involving outdoor lighting fixtures shall submit (as part of the application for permit) evidence that the proposed work will comply with this Regulation. The submission shall contain but shall not necessarily be limited to the following, all or part of which may be part or in addition to the information required elsewhere in the laws of this jurisdiction upon application for the required permit:
  - (i) plans indicating the location on the premises, and the type of illuminating devices, fixtures, lamps, supports, reflectors, and other devices;
  - (ii) description of the illuminating devices, fixtures, lamps, supports, reflectors, and other devices and the description may include, but is not limited to, catalog cuts by manufacturers and drawings (including sections where required);
  - (iii) photometric data, such as that furnished by manufacturers, or similar showing the angle of cut off or light emissions.
- (b) Additional Submission. The above required plans, descriptions and data shall be sufficiently complete to enable the Planning Department to readily determine whether compliance with the requirements of this Regulation will be secured. If such plans, descriptions and data cannot enable this ready determination, by reason of the nature or configuration of the devices, fixtures, or lamps proposed, the applicant shall additionally submit as evidence of compliance to enable such determination such certified reports of tests as will do so provided that these tests shall have been performed and certified by a recognized testing laboratory.
- (c) Subdivision Plat Certification. If any subdivision proposes to have installed street or other common or public area outdoor lighting, the final plat shall contain a statement certifying that the applicable provisions of the LTBB Outdoor Lighting Standards will be adhered to.
- (d) Lamp or Fixture Substitution. Should any outdoor light fixture, or the type of light source therein, be changed after the permit has been issued, a change request must be submitted to the building official for his approval, together with adequate information to assure compliance with this code, which must be received prior to substitution.

## **Article IV.**

### *Section 4.01* NOTIFICATION REQUIREMENTS:

- (a) The LTBB building permit application shall include a statement determining whether the planned project will include any outdoor lighting.
- (b) Within 30 days of the enactment of this regulation, the Code Enforcement Officer shall attach a copy of the Outdoor Lighting Standards, to all building permit applications.

## **Article V.**

### *Section 5.01* VIOLATIONS, LEGAL ACTIONS, AND PENALTIES:

- (a) Violation. It shall be a civil infraction for any person to violate any of the provisions of this Regulation. Each and every day during which the violation continues shall constitute a separate offense.
- (b) Violations and Legal Actions: If, after investigation, the Code Enforcement Officer finds that any provision of the Regulation is being violated, he shall give notice by hand delivery or by certified mail, return-receipt requested, of such violation to the owner and/or to the occupant of such premises, demanding that violation be abated within thirty (30) days of the date of hand delivery or of the date of mailing of the notice. If the violation is not abated within the thirty-day period, the Code Enforcement Officer may institute actions and proceedings, either legal or equitable, to enjoin, restrain, or abate any violations of this Regulation and to enforce the penalties for such violations.
- (c) Penalties: A violation of this Regulation, or any provision thereof, shall be punishable by a civil penalty of not less than fifty dollars nor more than one thousand dollars for any individual (and not more than ten thousand dollars for any corporation, association, or other legal entity) for each violation. The imposition of a fine under this Regulation shall not be suspended. Each day of violation after the expiration of the thirty-day period provided in paragraph B shall constitute a separate offense for the purpose of calculating the civil penalty.

## **CERTIFICATION**

As Chairperson, I certify that I approve these Regulations pursuant to WOS 2009-007.

Date: \_\_\_\_\_

\_\_\_\_\_  
Regina Gasco Bentley, Tribal Chairperson